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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAVID SCOTT MARLEAU, individually and as
an officer or director of Jedi Investments, LLC,
Impact Fundraising, LLC, Millenium
Fundraising, LLC, and PC Marl, Inc.;
JEDI INVESTMENTS, LLC, a Washington
limited liability company;
IMPACT FUNDRAISING, LLC, a Washington
limited liability company;
MILLENIUM FUNDRAISING, LLC, a
Washington limited liability company; and
PC MARL, INC., an Oregon corporation;

Defendants.

Civil No.

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

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

1. The FTC brings this action under §§ 13(b) and 19 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. §§ 6101-6108, to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief as is necessary to redress injury to consumers and

1 the public interest resulting from defendants' violations of Section 5(a) of the FTC Act, 15
2 U.S.C. § 45(a), and in violation of the FTC's Telemarketing Sales Rule (TSR), 16 C.F.R. Part
3 310.

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
6 and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

7 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C.
8 § 53(b).

9 **PLAINTIFF**

10 4. Plaintiff FTC is an independent agency of the United States Government created
11 by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section
12 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in
13 or affecting commerce. The FTC also is charged with enforcement of the Telemarketing Act, 15
14 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces
15 the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or
16 practices. The FTC is authorized to initiate federal district court proceedings, by its own
17 attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as
18 may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b),
19 57b, 6102(c), and 6105(b).

20 **DEFENDANTS**

21 5. David Scott Marleau is the president, an officer, or a member of Jedi Investments,
22 LLC, Impact Fundraising, LLC, Millenium Fundraising, LLC, and PC Marl, Inc. In connection
23 with the matters alleged herein, he has transacted business in this District. At all times material
24 to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled,
25 or participated in the acts and practices of defendants Jedi Investments, LLC, Impact
26 Fundraising, LLC, Millenium Fundraising, LLC, and PC Marl, Inc., including the acts and
27 practices set forth in this Complaint.
28

1 6. Acting through corporate defendants as well as two entities that have been
2 administratively dissolved and consequently are not named as defendants herein, Elite Sponsors,
3 LLC, and Imperial Fundraising, LLC, Defendant Marleau engaged in paid telemarketing
4 activities on behalf of the purported nonprofits known as the "Coalition of Police and Sheriffs,
5 Inc." ("COPS") and "American Veterans Relief Foundation" ("AVRF"), both of Santa Ana,
6 California.

7 7. Jedi Investments, LLC, has been a Washington limited liability company since its
8 creation on March 12, 2006. Its principal business location is at 1300 Esther Street, Vancouver,
9 Washington. Owned and managed by defendant Marleau, Jedi Investments, LLC, is owner, part
10 owner, or member of some of the other telemarketing entities named as defendants herein,
11 including Impact Fundraising, LLC, and Millenium Fundraising, LLC. As such, Jedi
12 Investments, LLC, is one of the entities through which Defendant Marleau has controlled the
13 other telemarketing entities. Jedi Investments, LLC, has conducted business in this District and
14 elsewhere throughout the United States.

15 8. Impact Fundraising, LLC, has been a Washington limited liability company since
16 its creation on June 26, 2006. Its principal business location is at 1300 Esther Street, Vancouver,
17 Washington. Controlled by defendant Marleau, Impact Fundraising, LLC, has engaged in paid
18 telemarketing activities on behalf of the purported nonprofit known as the "Disabled Firefighters
19 Fund" ("DFF") of Santa Ana, California. Impact Fundraising, LLC, has conducted business in
20 this District and elsewhere throughout the United States.

21 9. Millenium Fundraising, LLC, has been a Washington limited liability company
22 since its creation on July 28, 2006. Its principal business location is at 1300 Esther Street,
23 Vancouver, Washington. Controlled by defendant Marleau, Millenium Fundraising, LLC, has
24 engaged in paid telemarketing activities on behalf of the purported nonprofits known as the
25 "Cancer Assistance Network" d/b/a "Childrens Cancer Assistance Network" of Cathedral City,
26 California, and the Caring For Our Children Foundation of Everett, Washington. Millenium
27 Fundraising, LLC, has conducted business in this District and elsewhere throughout the United
28 States.

1 10. PC Marl, Inc., has been an Oregon corporation since its creation on July 28, 2005.
2 It is registered to do business in the State of Washington. Its principal business location is at
3 1300 Esther Street, Vancouver, Washington. Defendant Marleau controls PC Marl, Inc., and
4 through it managed and controls the other corporate entities named herein. PC Marl, Inc., has
5 conducted business in this District and elsewhere throughout the United States.

6 **COMMERCE**

7 11. At all times relevant to this complaint, defendants have maintained a substantial
8 course of conduct in or affecting commerce, as "commerce" is defined in Section 4 of the FTC,
9 15 U.S.C. § 44.

10 **COMMON ENTERPRISE AND INDIVIDUAL PARTICIPATION**

11 12. Jedi Investments, LLC, Impact Fundraising, LLC, Millenium Fundraising, LLC,
12 and PC Marl, Inc. ("Corporate Defendants") have operated together as a common enterprise
13 while engaging in the acts and practices alleged below. Defendants have conducted the business
14 practices described below through an interrelated network of companies that have common
15 ownership, officers, managers, employees, and business functions. Individual defendant
16 Marleau has formulated, directed, and/or controlled, or had authority to control, or participated
17 in the acts and practices of the Corporate Defendants that comprise the common enterprise.
18 Because defendants have operated as a common enterprise, each of them is jointly and severally
19 liable for the deceptive and unfair practices alleged below.

20 **DEFENDANTS' COURSE OF CONDUCT**

21 13. From at least July, 2006 until approximately October, 2008, defendants operated
22 as commercial fundraisers with telephone solicitation rooms first in Vancouver, Washington and
23 then in Portland, Oregon. Defendants contracted with purported nonprofit organizations for the
24 right to solicit donations on their behalf in several states including Washington, Oregon, and
25 Idaho. Defendant telemarketers then directly solicited the public by making outbound telephone
26 calls to consumers, often following up with letters, flyers, and pledge notices. Defendant
27 telemarketers based their fundraising pitch on solicitation materials supplied by their clients, but
28 also added their own claims in some instances. Defendants' clients included, but were not

1 limited to, American Veterans Relief Foundation, Inc., Coalition of Police and Sheriffs, Inc., and
2 Disabled Firefighters Fund, all of 2521 North Grand Avenue, Suite D, Santa Ana, California
3 97205; Cancer Assistance Network, d/b/a Children's Cancer Assistance Network, of 35-325
4 Date Palm Drive, Cathedral City, CA 92234; and Caring For Our Children Foundation, P.O. Box
5 3592, Everett, Washington 98203.

6 14. Defendant Marleau created several limited liability companies and one for-profit
7 corporation to raise money for his purported nonprofit clients. On paper, there was typically one
8 telemarketing firm for each nonprofit. In practice, the same employees, working out of the same
9 offices, made calls for multiple nonprofit clients.

10 **Defendants' Telemarketing Operation**

11 15. Defendant telemarketers have entered into contracts with the purported nonprofits
12 under which defendants solicit the public for donations. Defendants' fee is typically 80 to 85%
13 of the donations. The purported nonprofits' principals then spend most of the remaining 15 to
14 20% on themselves and their employees, or transfers to affiliates, then use the small remainder to
15 conduct a minimal level of charitable works. The purported nonprofits have spent little or none
16 of the total donations on their promised charitable programs.

17 16. In soliciting the public, defendants have targeted the elderly and pressed them to
18 provide their bank or credit card account numbers so donations could be charged or debited
19 immediately—sometimes more than once.

20 17. While soliciting donations for their clients, by telephone and in writing,
21 defendants have routinely made direct and indirect material misrepresentations to induce
22 consumers to donate.

23 **American Veterans Relief Foundation (AVRF)**

24 18. While telemarketing for the American Veterans Relief Foundation (AVRF),
25 defendants misrepresent what the AVRF calls "Operation Home Front." In solicitation materials
26 disseminated to donors, defendants represent that AVRF runs "Operation Home Front," a
27 substantial, bona fide program that provides financial assistance to the families of American
28 soldiers fighting overseas. Defendants also claim that consumers' donations will be used to

1 provide care packages to veterans in VA hospitals nationwide, and to provide financial support
2 for veterans' memorials. In addition, the solicitation materials defendants use for AVRF
3 strongly imply that the consumer's donation is going to a legitimate nonprofit that will spend a
4 meaningful amount of the money raised on the programs and activities described to the donor.

5 19. The claims about AVRF's programs are not true. Despite prominently featuring
6 "Operation Home Front" in its brochure, and extensively discussing the needs faced by families
7 of soldiers serving overseas, AVRF gives virtually none of donors' money to such families. Nor
8 does AVRF provide care packages to more than a small number of veterans in a few VA
9 hospitals – some 350 packages split among half a dozen VA hospitals in five states once a year
10 at Christmas – a far cry from the ongoing, nationwide program described in the AVRF
11 solicitation materials. Moreover, AVRF provides no financial assistance to veterans' memorials.

12 20. What little funds AVRF does spend on charitable program have been used to
13 provide cash grants of \$250 to \$350 to approximately 250 veterans a year and a handful of VA
14 hospitals. Even this effort falls short of a legitimate program. AVRF has no written
15 qualifications for receipt of the cash grants, no program to screen applicants for need or
16 eligibility, and, other than requiring an honorable discharge, no criteria for evaluating
17 applications. The so-called American Veterans Relief Foundation is not a Foundation, provides
18 little relief to only a few veterans, and exists almost solely for the purpose of paying its officers,
19 employees, and, most of all, the defendants and its other telemarketers.

20 **Coalition of Police and Sheriffs (COPS)**

21 21. The COPS deception begins with its very name. Consumers, told by defendants
22 that their donations will go to the Coalition of Police and Sheriffs, reasonably believe that the
23 organization is a coalition with members who are police or sheriffs. This belief is fostered by
24 the ubiquitous image of a police badge on materials sent to donors, and the promise in the COPS
25 brochure that COPS charges "no membership dues." COPS, however, is not a coalition and it
26 has no "members" who are police officers or sheriffs.

27 22. The solicitation materials that defendants disseminate to donors make additional
28 misrepresentations. Through telephone scripts, brochures, and thank you letters, defendants

1 claim that COPS operates a substantial, bona fide program to assist police officers injured in the
2 line of duty and the survivors of police officers killed in the line of duty. Such assistance, the
3 solicitation materials claim, is provided especially during the specific interval between injury or
4 death and the onset of official government assistance. Help is promised to “qualified” officers
5 for medical coverage, mortgage and car payments, and costs not covered by their departments.
6 Defendants also claim that COPS has a scholarship program for disabled officers and their
7 families. In addition, the COPS solicitation materials strongly imply that the donor’s
8 contribution is going to a legitimate nonprofit that will spend a meaningful amount of the money
9 raised on the programs and activities described to the donor.

10 23. COPS, however, has no “program” to provide benefits to disabled or fallen police
11 officers and their families. Instead, it has provided cash payments to a handful of people – fewer
12 than twelve individuals between 2005 and 2007 – who were, at one time, police officers and who
13 may be disabled. Moreover, it does not appear to focus its efforts on assisting officers waiting
14 for the onset of government benefits. In addition, COPS’s claims about limiting benefits to
15 “qualified” officers are not true. It has no process to verify whether applicants fall into the
16 specified class of beneficiaries (i.e., injured in the line of duty) or that they need money for the
17 specified purposes described to donors. Indeed, COPS has no way of assuring that its cash
18 payments will be spent on the approved programs. Finally, COPS has no “scholarship program”
19 and has funded education expenses on only two occasions in three years. The so-called
20 Coalition of Police and Sheriffs spends only a de minimis amount of funds raised on any
21 charitable program, and exists almost solely for the purpose of enriching its officers, its
22 employees, and, most of all, the defendants and its other telemarketers.

23 **Disabled Firefighters Fund (DFF)**

24 24. While soliciting donations for Disabled Firefighters Fund, defendants have
25 routinely made misrepresentations. Defendants’ telephone scripts, brochures, and thank you
26 letters claim that DFF operates a substantial, bona fide program to assist firefighters injured in
27 the line of duty and the survivors of firefighters killed in the line of duty. Through DFF’s “Cash
28 Benefit Program” and “Death Benefit Program,” Defendants claim that DFF provides benefits to

1 “qualified” disabled firefighters and their families. Defendants tell donors that DFF focuses on
2 providing benefits especially during the specific interval between the injury or death and the
3 onset of official government assistance. Benefits are to cover medical coverage, memorial
4 services, costs not covered by their department, and other expenses. By using words such as
5 “program,” “qualified,” and “application process,” defendants imply that DFF routinely reviews
6 applications using specific criteria to determine eligibility for assistance. In addition, the DFF
7 solicitation materials strongly imply that the donor’s contribution is going to a legitimate
8 nonprofit that will spend a meaningful amount of the money raised on the programs and
9 activities described to the donor.

10 25. In fact, DFF has no particular “program” or review process to determine whether
11 applicants were disabled in the line of duty, need help on an interim basis while waiting for
12 official benefits to begin, or otherwise qualify for assistance. DFF has provided support to only
13 a few individuals each year – 20 people total between 2005 and 2007 – several of whom do not
14 meet the criteria described to donors because they were not injured in the line of duty.
15 Moreover, DFF has not paid death benefits to the families of firefighters killed in the line of duty
16 regularly, if at all. DFF, like AVRFF and COPS, spends only a *de minimis* amount of funds raised
17 on any charitable program and exists almost solely for the purpose of enriching its officers, its
18 employees, and, most of all, the defendants and its other telemarketers.

19 **Childrens’ Cancer Assistance Network (CCAN)**

20 26. While soliciting donations to the Cancer Assistance Network d/b/a Childrens’
21 Cancer Assistance Network (CCAN), defendants have routinely informed donors that CCAN
22 operates a substantial, bona fide program to “improve the emotional and physical well being of
23 ill children across the country” by providing camps “with positive outlooks on life for our
24 children,” and “toys, gifts, puzzles, and games for relief from ongoing hospital stays,” and
25 transportation to and from treatment centers. In addition, defendants have routinely told donors,
26 “Just keep in mind that any amount you can give will go directly to help those children with
27 cancer and their families!!!”
28

1 27. In fact, CCAN has no particular “program” to assist children with cancer and their
2 families across the country by improving their emotional and physical well being, providing
3 camps, or transporting them to and from treatments. Nor is it true for defendants to tell donors,
4 “. . . any amount you give will go directly to help those children with cancer and their families.”
5 In 2007, CCAN raised more than one million dollars, more than \$100,000 of it through
6 defendants’ efforts, and then divided a total of \$3,300 in grants between three individuals and
7 four institutions. This *de minimis* amount—less than one-half of one percent of the total
8 raised—does not constitute the real and substantial charitable program described to donors, and
9 contrasts with the approximately \$600,000 that CCAN paid in fees to the defendants and other
10 telemarketers.

11 **Caring For Our Children Foundation (CFOCF)**

12 28. While soliciting donations to the Caring For Our Children Foundation (CFOCF),
13 defendants have routinely informed donors that CFOCF turns donations over to other charities
14 that are “service providers” who help “at-risk children who are distressed, endangered, exploited,
15 victimized or suffering.” When asked, defendants tell donors that up to 65% of their donations
16 will go to “programmatic services.” Deep into the solicitation, defendants do suggest that
17 consumers visit the CFOCF’s web site, which contains general statements about children at risk
18 and links to others’ web sites with information on resources to help them.

19 29. The truth is that CFOCF does not provide services to at-risk children or anyone
20 else. After more than 85% of donated funds are paid over to the fundraisers, CFOCF funnels
21 most of the remainder to one of its affiliates, then scatters a very small portion, about 4% of the
22 total donated, in small grants to various organizations, one of which is a domestic nonprofit that
23 may provide some services to youth at risk.

24 **Misrepresenting the Part of the Donation that Goes to Charitable Program**

25 30. Defendants tell donors to CCAN that whatever they give will go “directly” to
26 children with cancer, and they tell donors to CFOCF that 65% of their donations will fund its
27 charitable program. Both claims are misleading.

28

1 31. By contract, more than 80% of donations intended for CFOCF were paid to
2 defendants as fees. To claim that all or most of the donations to CCAN and CFOCF go to their
3 charitable programs, CCAN and CFOCF improperly employ an accounting practice known as
4 “joint cost allocation,” which sometimes allows a portion of fundraising costs to be allocated to a
5 charitable program—if part of the charitable program is to educate the public, and the charity
6 accomplishes that. Here, solicitations for CCAN and CFOCF emphasize direct assistance and
7 services, not education. Defendants do not disclose to donors that the charitable program they
8 are asked to support consists largely of the defendants, not the nonprofit, making telemarketing
9 calls just like the one the donor is receiving, then mailing an invoice with colorful inserts to
10 those who pledge to donate.

11 32. Defendants have routinely portrayed both CCAN and CFOCF to donors as
12 accomplishing far more than they really do, even though the truth about both organizations’ cost
13 allocations is apparent to any telemarketer who visits one of the public web sites that publishes
14 the annual tax returns of CCAN, CFOCF, and all other nonprofits and purported nonprofits that
15 file such returns.

16 **Failing to Substantiate Claims**

17 33. In fact, defendants have routinely failed to ascertain the truthfulness of the claims
18 they made about their clients’ program services, even though they were on notice that at least
19 some of those claims were likely deceptive, and information to verify those claims was readily
20 available. Instead, defendants sought only superficial approval of telephone scripts and other
21 printed solicitation materials from their nonprofit clients. No verification was sought for the
22 addition of unscripted claims of local benefit and other misrepresentations defendants made to
23 donors. Not only did defendants receive consumer complaints and inquiries from law
24 enforcement officials, but Marleau himself was the subject of state law enforcement actions
25 related to issues with the same type of fundraising. In spite of this, defendants took no
26 meaningful steps to independently investigate the truthfulness of the claims they made to the
27 public – even though a simple online search would have produced nonprofit tax returns,
28

1 watchdog ratings, news articles, and past law enforcement actions that called into question the
2 existence and level of the purported nonprofits' charitable programs.

3 **Misrepresenting Local Benefit**

4 34. While soliciting donations for their clients, defendants' solicitors have routinely
5 misrepresented that donated funds will be used in the donor's community. These
6 misrepresentations can be express, as when defendants stated that donated funds will go to help
7 disabled police or firefighters or homeless veterans in the donor's own community. They can
8 also be implied, as when the defendants provided donors with solicitation materials bearing a
9 local or in-state address where they can mail their contribution. These representations of local
10 benefit are false. Defendants' client nonprofits are all located in Santa Ana or Cathedral City,
11 California, or Everett, Washington. While the purported nonprofits provide assistance to only a
12 few individuals located in only a few communities across the country, defendants have promised
13 local benefits to many thousands of persons in hundreds of communities all over Washington,
14 Oregon and Idaho.

15 **Unauthorized Charges**

16 35. While soliciting donations for their clients, defendants have routinely requested
17 that the individuals they solicit authorize them to charge or debit the individual's bank account
18 or credit card a certain dollar amount. In numerous instances, when authorization was provided
19 for just one charge or debit, defendants proceeded to submit the charge or debit for payment two
20 or more times without obtaining additional permission.

21 **Misrepresenting a Pledge**

22 36. While soliciting donations for their clients, defendants have frequently mailed
23 letters or receipts to prospective donors informing them that they had made a pledge, even
24 though they had not made a pledge. In the case of a large number of these prospective donors,
25 defendants had not called them and asked them for a donation before mailing them letters and
26 receipts representing that they had pledged.

Ignoring Do Not Call Requests

37. While soliciting donations for their clients, defendants have routinely called donors on behalf of a nonprofit even though the donors had already informed defendants that they did not wish to receive any more calls on behalf of the nonprofit.

Injury

38. Generous individuals and businesses have relied on the defendants' misrepresentations of benefits to specific categories of persons in need, often in their local communities. They have donated in response to defendants' telemarketing pleas, believing that their donations will support the programs described to them. In fact, the programs defendants have promised to donors receive little or no money from these purported nonprofits, which exist almost solely for the purpose of compensating their officers, employees, and fundraisers. Not only were individual donors deceived, but their gifts left fewer dollars to support the many nonprofit organizations that operate real programs for veterans, disabled police officers and disabled firefighters.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT ONE

MISREPRESENTATION OF PROGRAM BENEFIT

40. In connection with soliciting charitable contributions from donors, defendants represent, expressly or by implication, that the donor's contribution will be used to fund particular charitable programs. Such representations include, but are not limited to, claims that donated funds will be used to:

- a. help AVRf operate a specific, substantial charitable program that provides financial assistance to the families of American soldiers fighting overseas; provides "Thinking of You" care packages to veterans in Veterans Administration hospitals across the country; and provides financial support to veterans' memorials;

1 b. help COPS operate specific, substantial charitable programs that 1) assist
2 qualified police officers injured in the line of duty, and their families, by paying mortgages, auto
3 loans, and medical bills, and other costs not covered by their departments; and 2) provide a
4 scholarship program to disabled officers and their families;

5 c. help DFF operate a specific, substantial charitable program that assists
6 qualified disabled firefighters injured in the line of duty, especially during the interval between
7 the injury or death and the onset of official government benefits, by providing cash benefits to
8 pay necessary living expenses such as mortgages, rent, medical coverage, and costs not covered
9 by their departments; and to provide death benefits to the families of firefighters killed in the line
10 of duty; and

11 d. help CCAN operate a specific, substantial program to provide services to
12 children suffering from cancer and their families, including funding gifts, camps, and
13 transportation to and from cancer treatments.

14 41. In truth and in fact, in numerous instances, little or none of the consumer's
15 donation funds the particular charitable programs described to them, and the consumer's
16 donations are not used to:

17 a. help AVRf operate a specific, substantial charitable program that provides
18 financial assistance to the families of American soldiers fighting overseas; provides "Thinking
19 of You" care packages to veterans in Veterans Administration hospitals across the country; and
20 that provides financial support to veterans' memorials;

21 b. help COPS operate specific, substantial charitable programs that 1) assist
22 qualified police officers injured in the line of duty, and their families, by paying mortgages, auto
23 loans, and medical bills, and other costs not covered by their departments; and 2) provide a
24 scholarship program to disabled officers and their families;

25 c. help DFF operate a specific, substantial charitable program that assists
26 qualified disabled firefighters injured in the line of duty, especially during the interval between
27 the injury or death and the onset of official government benefits, by providing cash benefits to
28 pay necessary living expenses such as mortgages, rent, medical coverage, and costs not covered

1 by their departments; and to provide death benefits to the families of firefighters killed in the line
2 of duty; and

3 d. help CCAN operate a specific, substantial program to provide services to
4 children suffering from cancer and their families, including funding gifts, camps, and
5 transportation to and from cancer treatments.

6 42. Therefore, the representations described in Paragraph 40 are false and misleading
7 and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
8 § 45(a).

9 **COUNT TWO**

10 **MISREPRESENTATION OF LOCAL BENEFIT**

11 43. In numerous instances, in connection with soliciting charitable contributions from
12 donors, defendants have represented, expressly or by implication, that the donor's contribution
13 will directly benefit persons or programs in the donor's state or local areas, or will be earmarked
14 for use in the donor's community.

15 44. In truth and in fact, in numerous instances, little or none of the donor's charitable
16 contribution directly benefits persons or programs in the donor's state or local area, and is not
17 earmarked for use in the donor's community.

18 45. Therefore, the representation described in Paragraph 43 is false and misleading
19 and constitutes a deceptive acts or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
20 § 45(a).

21 **COUNT THREE**

22 **MISREPRESENTATION THAT DONOR HAS MADE A PLEDGE**

23 46. In numerous instances, in connection with soliciting charitable contributions from
24 donors, defendants have represented, expressly or by implication, that the donor agreed to make
25 a donation, but had not remitted the donation to the defendants or their client organization.

26 47. In truth and in fact, in numerous instances, the donor did not agree to make a
27 donation to the organization.
28

1 48. Therefore, the representation described in Paragraph 46 is false and misleading
2 and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
3 § 45(a).

4
5 **COUNT FOUR**

6 **MISREPRESENTATION OF POLICE AFFILIATION**

7 49. In numerous instances, in connection with soliciting charitable contributions from
8 donors to the Coalition of Police and Sheriffs (COPS), defendants have represented, expressly or
9 by implication, that COPS is a “coalition” with “police and sheriffs” as members.

10 50. In truth and in fact, COPS is not a coalition and no police officers or sheriffs are
11 members.

12 51. Therefore, the representation described in Paragraph 49 is false and misleading
13 and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
14 § 45(a).

15
16 **COUNT FIVE**

17 **MISREPRESENTATION THAT**
18 **MOST OF DONATION SUPPORTS PARTICULAR PROGRAMS**

19 52. In numerous instances, in connection with soliciting charitable contributions
20 from donors to CCAN and CFOCF, defendants have represented, expressly or by implication,
21 that most of the donor’s contribution will be used to fund the program services described to the
22 donor.

23 53. In truth and in fact, most of the donor’s contribution is not used to fund the
24 program services described to the donor.

25 54. Therefore, the representation described in Paragraph 52 is false and misleading
26 and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
27 § 45(a).

1
2 **COUNT SIX**

3 **FAILURE TO SUBSTANTIATE CLAIMS**

4 55. By making the representations set forth in Paragraphs 40, 43, 46, 49 and 52,
5 defendants have represented, expressly or by implication, that they possessed and relied upon a
6 reasonable basis that substantiated such representations at the time the representations were
7 made.

8 56. In truth and in fact, defendants did not possess and rely upon a reasonable basis
9 that substantiated such representations at the times the representations were made.

10 57. Therefore, the representation described in Paragraph 55 is false and misleading
11 and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
12 § 45(a).

13
14 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

15 58. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
16 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108, in
17 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the Original TSR),
18 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the
19 FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final
20 amended Telemarketing Sales Rule (the TSR). 68 Fed. Reg. 4580, 4669.

21 59. Defendants are “sellers” or “telemarketers” engaged in “telemarketing” and make
22 “outbound telephone calls” to induce “charitable contributions” as those terms are defined by the
23 TSR, 16 C.F.R. § 310.2(z), (bb), (cc), (u), and (f). Anyone asked to contribute is a “donor” as
24 defined by the TSR, 16 C.F.R. § 310.2(m).

25 60. It is a deceptive telemarketing act or practice, and a violation of the TSR, for any
26 seller or telemarketer to make a false or misleading statement to induce a charitable contribution.
27 16 C.F.R. § 310.3(a)(4).

1 61. It is a fraudulent solicitation, a deceptive telemarketing act or practice, and a
2 violation of the TSR for any seller or telemarketer to engage in the following conduct:

3 a. Misrepresenting the purpose for which any charitable contribution will be
4 used;

5 b. Misrepresenting the percentage or amount of a donation that will go to a
6 charitable organization or to any particular charitable program, or

7 c. Misrepresenting that the charitable organization is affiliated with, or
8 sponsored or endorsed by, any person or government entity. 16 C.F.R. § 310.3(d)(3), (4), and
9 (6).

10 62. It is an abusive telemarketing act or practice and a violation of the TSR for any
11 seller or telemarketer to engage in the following conduct:

12 a. Causing billing information to be submitted for payment, directly or
13 indirectly, without the express informed consent of the donor. 16 C.F.R. § 310.4(a)(6); or

14 b. Initiating any outbound telephone call to a person when that person
15 previously has stated that he or she does not wish to receive an outbound telephone call made by
16 or on behalf of the charitable organization for which a charitable contribution is being solicited.
17 16 C.F.R. § 310.4(b)(1)(iii)(A).

18 63. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
19 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an
20 unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the
21 FTC Act, 15 U.S.C. § 45(a).

22
23 **COUNT SEVEN**

24 **MAKING A FALSE OR MISLEADING STATEMENT**

25 **TO INDUCE A CHARITABLE CONTRIBUTION**

26 64. In numerous instances, in connection with soliciting charitable contributions from
27 donors by telephone, as alleged in Paragraphs 40, 43, 46, 49 and 52, defendants have made a
28 false or misleading statement to induce a charitable contribution.

1 65. Defendants' practice as alleged in Paragraph 64 is a deceptive telemarketing act
2 or practice that violates Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

3
4 **COUNT EIGHT**

5 **MISREPRESENTING THE PURPOSE**

6 **FOR WHICH A CHARITABLE CONTRIBUTION WILL BE USED**

7 66. In numerous instances, in connection with soliciting charitable contributions from
8 donors by telephone, defendants have misrepresented, as alleged in Paragraphs 40, 43, and 52
9 above, the purpose for which a charitable contribution will be used.

10 67. Defendants' practice as alleged in Paragraph 66 is a deceptive telemarketing act
11 or practice that violates Section 310.3(d)(3) of the TSR, 16 C.F.R. § 310.3(d)(3).

12
13 **COUNT NINE**

14 **MISREPRESENTING THE PERCENTAGE OR AMOUNT**

15 **GOING TO A CHARITABLE ORGANIZATION OR PROGRAM**

16 68. In numerous instances, in connection with soliciting charitable contributions from
17 donors by telephone, defendants have misrepresented the percentage or amount of the
18 contribution that will go to a charitable organization or a particular charitable program.

19 69. Defendants' practice as alleged in Paragraph 68 is a deceptive telemarketing act
20 or practice that violates Section 310.3(d)(4) of the TSR, 16 C.F.R. § 310.3(d)(4).

21
22 **COUNT TEN**

23 **MISREPRESENTING A CHARITABLE ORGANIZATION'S**

24 **AFFILIATION WITH ANY GOVERNMENT ENTITY**

25 70. In numerous instances, in connection with soliciting charitable contributions from
26 donors by telephone, defendants have misrepresented a charitable organization's affiliation with,
27 or endorsement or sponsorship by, any person or government entity.
28

1 71. Defendants' practice as alleged in Paragraph 70 is a deceptive telemarketing act
2 or practice that violates Section 310.3(d)(6) of the TSR, 16 C.F.R. § 310.3(d)(6).

3
4
5 **COUNT ELEVEN**

6 **SUBMITTING BILLING INFORMATION FOR PAYMENT**

7 **WITHOUT EXPRESS INFORMED CONSENT**

8 72. In numerous instances, in connection with soliciting charitable contributions from
9 donors by telephone, defendants have submitted billing information for payment without the
10 express informed consent of the donors.

11 73. Defendants' practice as alleged in Paragraph 72 is an abusive telemarketing act or
12 practice that violates Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6).

13
14 **COUNT TWELVE**

15 **IGNORING ENTITY-SPECIFIC**

16 **DO NOT CALL REQUESTS**

17 74. In numerous instances, in connection with soliciting charitable contributions from
18 donors by telephone, defendants have engaged in initiating outbound telephone calls to persons
19 who had previously stated that they did not wish to receive calls made by or on behalf of the
20 charitable organization for which a charitable contribution was being solicited.

21 75. Defendants' practice as alleged in Paragraph 74 is an abusive telemarketing act or
22 practice that violates Section 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

23
24 **INJURY TO THE PUBLIC INTEREST**

25 76. Consumers, charitable organizations, and the public interest have all suffered
26 injury as a result of defendants' violations of Section 5(a) of the FTC Act and the TSR. In
27 addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent
28

1 injunctive relief by this Court, defendants are likely to continue to injure consumers and
2 charitable organizations, reap unjust enrichment, and harm the public interest.

3
4 **THIS COURT'S POWER TO GRANT RELIEF**

5 77. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
6 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
7 of the FTC Act and the TSR. The Court, in the exercise of its equitable jurisdiction, may award
8 ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-
9 gotten monies, to prevent and remedy any violation of any provision of law enforced by the
10 FTC.

11 78. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
12 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court
13 finds necessary to redress injury to consumers resulting from defendants' violations of the TSR,
14 including the rescission and reformation of contracts, and the refund of money.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19
18 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15
19 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

- 20 (1) Enter a permanent injunction to prevent future violations of the FTC Act and the
21 TSR by defendants;
- 22 (2) Award such relief as the Court finds necessary to redress injury to consumers
23 resulting from the defendants' violations of the FTC Act and the TSR, including
24 but not limited to, rescission or reformation of contracts, restitution, the refund of
25 monies paid, and the disgorgement of ill-gotten monies, except that the FTC seeks
26 no money judgment against Defendant Marleau; and
27
28

(3) Award the FTC the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper, except that the FTC seeks no money judgment against Defendant Marleau.

DATED: MAY 19, 2009.

Respectfully submitted,

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