

RECEIVED
2009 JUN 22 A 10:15
CLERK OF DISTRICT COURT
DISTRICT OF NEVADA
ST. GEORGE

1 DANIEL O. HANKS
KATHLEEN BENWAY
2 Federal Trade Commission
600 Pennsylvania Avenue N.W.
3 Washington, D.C. 20580
(202) 326-2472 (Hanks)
4 (202)326-2024 (Benway)
(202) 326-3395 (facsimile)
5 dhanks@ftc.gov
kbenway@ftc.gov
6

7 BLAINE T. WELSH
Assistant United States Attorney
8 Bar No. 4790
333 Las Vegas Blvd. South, Suite 5000
9 Las Vegas, NV 89101
(702) 388-6336 (phone)
10 (702) 388-6787 (facsimile)
Blaine.Welsh@usdoj.gov
11 Attorneys for Plaintiff
12

13 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA
14

15 **FEDERAL TRADE COMMISSION,**

16 Plaintiff,

2:09-cv-01112-RCJ-LRL

17 v.

18 **INFUSION MEDIA, INC.,**
a corporation, also
19 d/b/a Google Money Tree,
Google Pro,
20 Internet Income Pro, and
Google Treasure Chest;

21 **WEST COAST INTERNET MEDIA, INC.,**
a corporation, also
22 d/b/a Google Money Tree,
Google Pro,
23 Internet Income Pro, and
24 Google Treasure Chest;

25 **TWO WARNINGS, LLC,**
a limited liability company;

26 **TWO PART INVESTMENTS, LLC,**
a limited liability company;
27

**PLAINTIFF'S COMPLAINT
FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

[FILED UNDER SEAL]

1 PLATINUM TELESERVICES, INC.,
2 a corporation;
3 JONATHAN EBORN,
4 individually and as an officer of
5 Infusion Media, Inc.,
6 Two Warnings, LLC,
7 Two Part Investments, LLC, and
8 West Coast Internet Media, Inc.;
9 STEPHANIE BURNSIDE,
10 individually and as an officer of
11 Two Warnings, LLC,
12 Two Part Investments, LLC, and
13 West Coast Internet Media, Inc.;
14 MICHAEL McLAIN MILLER,
15 individually and as an officer of
16 Infusion Media, Inc.,
17 Two Warnings, LLC, and
18 Two Part Investments, LLC; and
19 TONY NORTON,
20 individually and as an officer of
21 Platinum Teleservices, Inc.
22
23 Defendants.
24
25
26
27

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 917(c) of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), to obtain temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for the defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
3 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b). This action arises under
4 15 U.S.C. § 45(a) and 15 U.S.C. § 1693e.

5 3. Venue in the United States District Court for the District of Nevada is proper
6 under 28 U.S.C. § 1391(b) & (c) and 15 U.S.C. § 53(b).

7 **THE PARTIES**

8 4. The FTC is an independent agency of the United States Government created by
9 statute. 15 U.S.C. § 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of
10 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or
11 practices in or affecting commerce. The FTC is also charged with the enforcement of the EFTA,
12 15 U.S.C. § 1693 *et seq.*, which regulates the rights, liabilities, and responsibilities of participants
13 in electronic fund transfer systems. The FTC is authorized to initiate federal district court
14 proceedings by its own attorneys to enjoin violations of the FTC Act and the EFTA and to secure
15 such other equitable relief, including rescission of contracts, restitution, and disgorgement, as
16 may be appropriate in each case. 15 U.S.C. § 53(b).

17 5. Defendant Infusion Media, Inc., (“Infusion Media”), also doing business as
18 Google Money Tree, Google Pro, Internet Income Pro, and Google Treasure Chest, is a Utah
19 corporation with its principal place of business listed in Utah public records as 482 North 400
20 East, Springville, Utah, 84663. Infusion Media transacts or has transacted business in the
21 District of Nevada.

22 6. Defendant West Coast Internet Media, Inc., (“West Coast Internet”), also doing
23 business as Google Money Tree, Google Pro, Internet Income Pro, and Google Treasure Chest,
24 is a Nevada corporation with its principal place of business listed in Nevada public records as
25 5836 South Pecos Road, Suite D-101, Las Vegas, Nevada, 89120. West Coast Internet is
26 domesticated in Utah with its place of business in Utah listed in Utah public records as 2249
27

1 Gambel Oak Drive, Sandy, Utah, 84092. West Coast Internet transacts or has transacted
2 business in the District of Nevada.

3 7. Defendant Two Warnings, LLC, ("Two Warnings") is a Nevada limited liability
4 company with its principal place of business listed in Nevada public records as 3557 S. Valley
5 View, Suite 100, Las Vegas, Nevada, 89103. Two Warnings transacts or has transacted business
6 in the District of Nevada.

7 8. Defendant Two Part Investments, LLC, ("Two Part Investments") is a Nevada
8 limited liability company with its principal place of business listed in Nevada public records as
9 3557 S. Valley View, Suite 100, Las Vegas, Nevada, 89103. Two Part Investments transacts or
10 has transacted business in the District of Nevada.

11 9. Defendant Platinum Teleservices, Inc., ("Platinum Teleservices") is a Nevada
12 corporation with its principal place of business listed in Nevada public records as P.O. Box 1536,
13 Draper, Utah, 84020. Platinum Teleservices has applied for authority to conduct business in
14 Utah, with the address of its principal office listed in Utah public records as 405 East 12450
15 South, Draper, Utah, 84020. Platinum Teleservices transacts or has transacted business in the
16 District of Nevada. Infusion Media, West Coast Internet, Two Warnings, Two Part Investments,
17 and Platinum Teleservices are hereinafter collectively referred to as the "Google Money Tree
18 Corporate Defendants."

19 10. Defendant Jonathan Eborn ("Eborn") is the director of Infusion Media, a manager
20 of Two Warnings and Two Part Investments, and the president and secretary of West Coast
21 Internet. At all times material to this Complaint, acting alone or in concert with others, he has
22 formulated, directed, controlled, had the authority to control, or participated in the acts and
23 practices of the Google Money Tree Corporate Defendants, including the acts and practices set
24 forth in this Complaint. Eborn transacts or has transacted business in this District in connection
25 with the matters alleged herein.

26 11. Defendant Stephanie Burnside ("Burnside") is the treasurer and director of West
27

1 Coast Internet and was, during at least part of the time period relevant to this Complaint, a
2 manager of Two Warnings and Two Part Investments. At all times material to this Complaint,
3 acting alone or in concert with others, she has formulated, directed, controlled, had the authority
4 to control, or participated in the acts and practices of the Google Money Tree Corporate
5 Defendants, including the acts and practices set forth in this Complaint. Burnside transacts or
6 has transacted business in this District in connection with the matters alleged herein.

7 12. Defendant Michael McLain Miller, also known as M. McLain Miller and McLain
8 Miller ("Miller") is an officer of Infusion Media, a manager of Two Warnings and Two Part
9 Investments, and was, during at least part of the time period relevant to this Complaint, the
10 director of Infusion Media. At all times material to this Complaint, acting alone or in concert
11 with others, he has formulated, directed, controlled, had the authority to control, or participated
12 in the acts and practices of the Google Money Tree Corporate Defendants, including the acts and
13 practices set forth in this Complaint. Miller transacts or has transacted business in this District
14 in connection with the matters alleged herein.

15 13. Defendant Tony Norton ("Norton") is the president, secretary, treasurer, and
16 director of Platinum Teleservices. At all times material to this Complaint, acting alone or in
17 concert with others, he has formulated, directed, controlled, had the authority to control, or
18 participated in the acts and practices of the Google Money Tree Corporate Defendants, including
19 the acts and practices set forth in this Complaint. Norton transacts or has transacted business in
20 this District in connection with the matters alleged herein.

21 **COMMERCE**

22 14. At all times relevant to this Complaint, the defendants have maintained a
23 substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of
24 the FTC Act, 15 U.S.C. § 44.

25 **COMMON ENTERPRISE**

26 15. The Google Money Tree Corporate Defendants have operated and functioned as a
27

1 common enterprise using names including "Google Money Tree," "Google Pro," "Internet
2 Income Pro," "Google Treasure Chest," "googlemoneytree.com,"
3 "internetincomeinitiative.com," and "googletreasurechest.com" while engaging in the deceptive
4 and unlawful acts and practices alleged below. The Google Money Tree Corporate Defendants
5 have conducted the business practices described below through an interrelated network of
6 companies that have common ownership, officers, managers, business functions, office
7 locations, and accounting functions. Because the Google Money Tree Corporate Defendants
8 have operated as a common enterprise, each of them is jointly and severally liable for the
9 deceptive and unfair acts and practices alleged below. Individual defendants Eborn, Burnside,
10 Miller, and Norton have formulated, directed, controlled, had the authority to control, or
11 participated in the acts and practices of the Google Money Tree Corporate Defendants that
12 comprise the common enterprise.

13 **THE DEFENDANTS' BUSINESS PRACTICES**

14 16. Since at least September 2008, and continuing thereafter, the defendants have
15 advertised, marketed, promoted, offered to sell, and sold home business opportunity "kits." The
16 defendants maintain or have maintained Internet websites, including those found or formerly
17 found at the domains googlemoneytree.com, internetincomeinitiative.com,
18 googletreasurechest.com, deliciousdownloads.com, safedownloadarea.com, and
19 redtomorrowfield.com, through which they advertise, market, promote, offer to sell, and sell
20 their work-at-home kits.

21 17. According to the defendants' websites, consumers who purchase the defendants'
22 kits, which are marketed under names including "Google Money Tree," "Google Pro," "Internet
23 Income Pro," and "Google Treasure Chest," can work at home and earn a substantial income by
24 "just filling out forms and running searches on Google and Yahoo."

25 18. The defendants require consumers who wish to receive a work-at-home kit to
26 provide credit or debit card account information, ostensibly to pay a small shipping and handling
27

1 fee (usually \$1.97 or \$3.88). The defendants' websites fail, however, to disclose adequately that
2 they automatically enroll consumers who order a kit in a website membership and/or other
3 programs that consumers must cancel to avoid additional and recurring monthly fees (usually
4 \$72.21), and that the defendants use consumers' account information to charge the consumers'
5 credit card accounts or debit their bank accounts for these monthly fees.

6 Defendants' Automatic Enrollment in Continuity Program

7 19. Internet websites operated by the defendants promote and sell work-at-home kits.
8 The initial sign-up pages for these websites are found or were formerly found at domains
9 including deliciousdownloads.com, safedownloadarea.com, and redtomorrowfield.com. The
10 initial sign-up pages vary in the information they display regarding costs or fees for a work-at-
11 home kit: some initial sign-up pages display no cost information, some state that the kit is
12 "free," and some identify only a nominal fee (e.g., "just pay \$3.88 S/H").

13 20. The defendants' websites also state that consumers who order the defendants' kits
14 will receive free access to members-only areas of the defendants' websites. For example, one
15 page prominently displays a logo at its top stating "FREE ACCESS / Google Money Tree /
16 Membership Website." The same page includes the following statement:

17 **What You Get:**

- 18 • **Google Money Tree Work From Home Kit**
19 • **Exclusive Access to Google Money Tree Membership Site**

20 A third representation on the same page states

21 **Also . . . for a limited time, not only will you get my entire**
22 **GOOGLE MONEY TREE KIT, but you will also get a seven**
23 **day trial to my private, members only website.**

24 21. The defendants' initial sign-up pages require an ordering consumer to provide his
25 name, e-mail address, telephone number, and mailing address. Consumers who provide this
26 information and click on a button with a label such as "Send My Kit" or "Send me my kit!" are
27

1 taken to a payment information page.

2 22. The payment information page requires consumers to enter credit card or debit
3 card information to supplement the contact information already entered. Text stating that the
4 consumer will be charged a small amount (usually \$1.97 or \$3.88) for shipping and handling is
5 prominently featured at the top of these sign-up pages, near the fields in which consumers must
6 enter payment information. One of the defendants' payment information pages states

7 **JUST ONE MORE STEP**

8 **Just pay a small shipping charge of \$3.88**

9 **and your Google Pro Kit will be on it's [sic] way!**

10 ...

11 **Your credit card will be billed: \$3.88**

12 Another of the defendants' payment information pages states

13 **Google Money Tree Kit: FREE**

14 **Shipping & Handling: \$3.88**

15 **Enter your Shipping Payment Information below**

16 23. The payment information page also requires consumers to check a box adjacent to
17 the statement "I agree to the Terms and Conditions." In some current or former versions of the
18 defendants' payment information pages, this box was pre-checked.

19 24. In at least some versions of the defendants' payment information pages, the words
20 "Terms and Condition" in the phrase "I agree to the Terms and Conditions" serve as a link to a
21 separate "Terms and Conditions" page. These words, however, are not underlined to indicate
22 that they serve as a link.

23 25. Links for the "Terms & Conditions" pages also appear at the bottom of the
24 defendants' initial sign-up and payment information pages.

25 26. A consumer is not required to click on a "Terms & Conditions" link to complete a
26 purchase from the defendants, and will reach the content of a "Terms & Conditions" page only if

1 he or she notices the “Terms & Conditions” link and voluntarily chooses to click on it.

2 27. To complete their order, consumers must click a button on the defendants’
3 payment information page. The labels of the buttons on the defendants’ payment information
4 pages include “I’m ready to order!” and “Ship My Kit.”

5 28. Consumers who complete the purchase of a kit are taken to a confirmation page
6 that states that “[w]hile you are waiting for your kit, and during your free trial, you have
7 unlimited access to the Members only website” These consumers also receive a
8 confirmation e-mail stating the same.

9 29. Separate “Terms & Conditions” pages of the defendants’ websites include
10 material terms and conditions of the kit offer. For example, one “Terms & Conditions” page
11 states the following:

12 Upon submitting a request for Membership, a Member ID and
13 Password are assigned to you and can be used to gain access to
14 googlemoneytree.com. The initial shipping and handling charge of
15 three dollars and eighty eight cents, includes the Internet Money
16 Tree Kit as well as seven days worth of access to the online
17 directories and training. After seven days, if you choose not to
18 cancel, you will be billed your first monthly membership fee of
19 seventy two dollars and twenty one cents for the membership fee
20 for the googlemoneytree.com membership. Membership fees will
21 be charged to the credit card used by you to complete the
22 transaction.

23 30. Information that a consumer’s credit card will be charged or bank account will
24 be debited a monthly membership fee of \$72.21 if the consumer does not cancel his website
25 membership within seven days is not disclosed on the initial sign-up pages, on the payment
26 information pages, on the confirmation pages, or in the confirmation e-mails.

1 31. Particularly in light of the prominent representations on their websites that
2 consumers purchasing the defendants' kits would be charged only a small amount and that
3 consumers were receiving a free trial of website access, the disclosures on the defendants'
4 "Terms & Conditions" pages are inadequate to notify consumers that if they ordered a kit they
5 would be enrolled in a negative option continuity program and to inform consumers of the
6 terms and conditions of the continuity program.

7 32. In numerous instances, consumers were unaware that the defendants were
8 enrolling them in continuity programs and imposing charges on their credit card accounts or
9 debiting their bank accounts in excess of the shipping and handling fee. In numerous instances,
10 consumers do not discover that the defendants are imposing charges or debits in excess of the
11 shipping and handling fee until the consumers review their credit card or bank account
12 statements.

13 33. The defendants did not obtain authorization in a writing signed or similarly
14 authenticated by the consumer to debit consumers' bank accounts on a recurring basis. The
15 defendants also failed to provide consumers with a copy of any purported authorization to debit
16 the consumers' bank accounts on a recurring basis.

17 Defendants' False Income Claims

18 34. The defendants' websites represent that consumers can earn over \$100,000 in six
19 months using the defendants' kits. The defendants' websites include the following specific
20 income claims:

- 21 • **Learn How A Stay At Home Mom,**
22 **With No Experience, Earned**
23 **\$107,389 In Six Months Just**
24 **Filling Out Forms & Doing**
25 **Searches On Google & Yahoo!;**
- 26 • **Learn how to make \$107,389 in Six Months**

1 **Just filling out forms and doing searches on Google and Yahoo; and**

- 2 • **[M]ake over \$100,000 in the next 6 months working from home.**

3 35. The defendants' websites also include, among other testimonials, the following:

4 **Want Proof? Look at my sales for the first part of May this**
 5 **year. Keep in mind, I started in this system PART TIME in**
 6 **March. It is so easy, I can't believe I didn't think of it before!**
 7 **If you have access to a computer (doesn't have to be your own),**
 8 **and can follow instructions . . . YOU CAN DO THIS TOO!**

9 36. A chart adjacent to this testimonial reflects the following dates and

10 dollar amounts:

11	Fri	May 16	\$1,167.37
12	Thu	May 15	\$2,606.40
13	Wed	May 14	\$1,824.32
14	Tue	May 13	\$858.04
15	Mon	May 12	\$2,370.03
16	Sun	May 11	\$839.06
17	Sat	May 10	\$681.48
18	Fri	May 09	\$1,054.67
19	Thu	May 08	\$1,111.36
20	Wed	May 07	\$2,115.40
21	Tue	May 06	\$2,957.37
22	Mon	May 05	\$3,473.72
23	Sun	May 04	\$1,878.94
24	Sat	May 03	\$2,649.97

25 37. In numerous instances, consumers who order a kit from the defendants and pay a
 26 shipping and handling charge never receive any product shipment. Those consumers who order
 27

1 a kit from the defendants and receive a product shipment receive only a computer CD, the
2 contents of which do not provide consumers with a method for earning substantial income by
3 “just filling out forms and doing searches on Google and Yahoo.”

4 Defendants’ Misrepresentations Regarding Affiliation

5 38. The defendants have advertised, marketed, promoted, offered to sell, and sold
6 products while operating under names such as “Google Money Tree,” “Google Pro,” and
7 “Google Treasure Chest” that include the term “Google.”

8 39. The defendants have advertised, marketed, promoted, offered to sell, and sold
9 products such as “Google Money Tree,” “Google Pro,” and “Google Treasure Chest” that
10 include the term “Google” in the product name.

11 40. The defendants have advertised, marketed, promoted, offered to sell, and sold
12 products using Internet domain names such as googlemoneytree.com and
13 googletreasurechest.com that include the term “Google.”

14 41. Websites operated by the defendants for the purpose of advertising, marketing,
15 promoting, offering to sell, and selling their products prominently use logos identical to or
16 confusingly similar to the logo of Google Inc. and its Internet search engine.

17 42. The defendants’ use of the term “Google” in the defendants’ business names,
18 product names, and Internet domain names and the defendants’ use of logos that are identical to
19 or confusingly similar to the logo of Google Inc. and its Internet search engine create a false
20 aura of legitimacy by suggesting that the defendants’ are affiliated with Google Inc.

21 43. The defendants and their products are not affiliated with Google Inc.

22 44. In some instances, the defendants’ websites include a statement that the
23 defendants are not affiliated with, endorsed by, or associated with “Google.” This statement,
24 however, appears only at the bottom of these webpages and only in small type.

25 45. In light of the prominent use of the term “Google” in the defendants’ business
26 names, product names, and Internet domain names, and in light of the defendants’ use of logos

1 that are identical to or confusingly similar to the logo of Google Inc. and its Internet search
2 engine, the statement appearing in small type at the bottom of some pages of the defendants'
3 websites that the defendants are not affiliated with, endorsed by, or associated with "Google" is
4 inadequate to counteract the false suggestion that the defendants are affiliated with Google Inc.

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

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

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

10 **COUNT I**

11 **Failure to Disclose Material Terms**

12 48. In the course of marketing, promoting, offering for sale, and selling their work-at-
13 home kits, the defendants represent, expressly or by implication, that consumers can order a kit
14 and will incur only a small charge (usually \$1.97 or \$3.88) for shipping and handling.

15 49. The defendants have failed to disclose, or to disclose adequately, to consumers
16 material terms and conditions of the offer for the work-at-home kits, including:

- 17 a. that the defendants automatically enroll consumers who order a kit in a
18 membership for the defendants' websites and/or other programs that consumers
19 must cancel to avoid monthly additional charges;
- 20 b. that the defendants will use consumers' credit or debit account information to
21 periodically charge consumers for the website membership and/or other
22 programs;
- 23 c. the cost of the website membership and/or other programs;
- 24 d. when consumers must cancel the membership and/or other programs to avoid
25 further charges; and
- 26 e. the means consumers must use to cancel the membership and/or other programs.
- 27

1 50. The defendants' failure to disclose or to disclose adequately the material
2 information set forth in Paragraph 49, above, in light of the representation described in
3 Paragraph 48, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,
4 15 U.S.C. § 45(a).

5 **COUNT II**

6 **False or Unsubstantiated Representations Regarding Income**

7 51. In the course of marketing, promoting, offering for sale, and selling their work-at-
8 home kits, the defendants represent, expressly or by implication, that consumers who order their
9 work-at-home kits are likely to earn substantial income.

10 52. The representation set forth in Paragraph 51 is false and/or was not substantiated
11 at the time the representation was made.

12 53. Therefore, the defendants' making of the representation as set forth in
13 Paragraph 51 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,
14 15 U.S.C. § 45(a).

15 **COUNT III**

16 **False Representations Regarding Affiliation**

17 54. In the course of marketing, promoting, offering for sale, and selling their work-at-
18 home kits, the defendants represent, expressly or by implication, that the defendants are
19 affiliated with Google Inc.

20 55. In truth and in fact, the defendants are not affiliated with Google Inc.

21 56. Therefore, the defendants' making of the representation as set forth in
22 Paragraph 54 of this complaint constitutes a deceptive act or practice in violation of Section 5(a)
23 of the FTC Act, 15 U.S.C. § 45(a).

1 **THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

2 57. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a “preauthorized
3 electronic fund transfer from a consumer’s account may be authorized by the consumer only in
4 writing, and a copy of such authorization shall be provided to the consumer when made.”
5 Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term “ ‘preauthorized
6 electronic fund transfer’ means an electronic fund transfer authorized in advance to recur at
7 substantially regular intervals.”

8 58. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
9 “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized only by
10 a writing signed or similarly authenticated by the consumer. The person that obtains the
11 authorization shall provide a copy to the consumer.”

12 59. Section 205.10 of the Federal Reserve Board’s Official Staff Commentary to
13 Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he authorization process should
14 evidence the consumer’s identity and assent to the authorization.” *Id.* ¶ 10(b), cmt 5. The
15 Official Staff Commentary further provides that “[a]n authorization is valid if it is readily
16 identifiable as such and the terms of the preauthorized transfer are clear and readily
17 understandable.” *Id.* ¶ 10(b), cmt 6.

18 60. Section 914 of the EFTA, 15 U.S.C. § 1693l, provides that “[n]o writing or other
19 agreement between a consumer and any other person may contain any provision which
20 constitutes a waiver of any right conferred or cause of action created by this subchapter.”

21 **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

22 **COUNT IV**

23 61. In numerous instances, the defendants have debited consumers’ bank accounts on
24 a recurring basis without obtaining a written authorization signed or similarly authenticated from
25 consumers for preauthorized electronic fund transfers from the accounts, thereby violating
26 Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E,
27

1 12 C.F.R. § 205.10(b).

2 62. In numerous instances, the defendants have debited consumers' bank accounts on
3 a recurring basis without providing a copy of a written authorization signed or similarly
4 authenticated by the consumer for preauthorized electronic fund transfers from the consumer's
5 account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
6 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

7 63. Pursuant to Section 917 of the EFTA, 15 U.S.C. § 1693o(c), every violation of the
8 EFTA and Regulation E constitutes a violation of the FTC Act.

9 64. By engaging in violations of the EFTA and Regulation E as alleged in
10 Paragraphs 61 and 62, the defendants have engaged in violations of the FTC Act. 15 U.S.C.
11 § 1693o(c).

12 **CONSUMER INJURY**

13 65. Consumers have suffered and will continue to suffer substantial injury as a result
14 of the defendants' violations of Section 5(a) of the FTC Act, Section 907(a) of the EFTA, and
15 Section 205.10(b) of Regulation E. In addition, defendants have been unjustly enriched as a
16 result of their unlawful acts or practices. Absent injunctive relief by this Court, the defendants
17 are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

18 **THIS COURT'S POWER TO GRANT RELIEF**

19 66. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
20 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
21 of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary
22 relief including rescission of contracts, restitution, and the disgorgement of ill-gotten monies to
23 prevent and remedy any violations of any provision of law enforced by the Commission.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the
26 FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court
27

1 1. Award Plaintiff such preliminary injunctive and ancillary relief as may be
2 necessary to avert the likelihood of consumer injury during the pendency of this action and to
3 preserve the possibility of effective final relief, including but not limited to a temporary
4 restraining order, an order freezing assets, immediate access to the defendants' business
5 premises, and appointment of a receiver;

6 2. Enter a permanent injunction to prevent future violations of the the FTC Act, the
7 EFTA, and Regulation E, by the defendants;

8 3. Award such relief as the Court finds necessary to redress injury to consumers
9 resulting from the defendants' violations of the FTC Act, the EFTA, and Regulation E, including
10 but not limited to rescission or reformation of contracts, the refund of monies paid, and the
11 disgorgement of ill-gotten monies; and

12 4. Award Plaintiff the costs of bringing this action, as well as such other and
13 additional relief as the Court may determine to be just and proper.

14
15
16
17 Respectfully submitted,

18
19 Dated: June 22, 2009

20 David C. Shonka
Acting General Counsel

21
22 

23 DANIEL O. HANKS
KATHLEEN BENWAY
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, D.C. 20580
24 (202) 326-2472/2024
25 (202) 326-3395 (facsimile)
26 dhanks@ftc.gov; kbenway@ftc.gov
27