**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. ____________________________



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TIMESHARE MEGA MEDIA AND MARKETING GROUP, INC., a Florida corporation, also d/b/a Timeshare Market Pro, Inc.;

TIMESHARE MARKET PRO, INC., a Florida corporation;

TAPIA CONSULTING, INC., a Florida corporation;

JOSEPH CRAPELLA, a/k/a JOSEPH JOHN PHILBIN;

PASQUALE PAPPALARDO;

LISA TUMMINIA PAPPALARDO;

PASQUALINO AGOVINO;

LOUIS TOBIAS DUANY; and

PATRICIA A. WALKER,

Defendants.

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**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 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 Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101, *et seq.*, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

## JURISDICTION AND VENUE

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

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

## PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces 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.

5. 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 rescission or reformation of contracts, restitution, the

refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b, 6102(c) and 6105(b).

## DEFENDANTS

6. Defendant Timeshare Mega Media and Marketing Group, Inc. ("TMMMG"), also doing business as Timeshare Market Pro, Inc., is a Florida corporation with its principal place of business at 2652 E. Oakland Park Blvd., Fort Lauderdale, Florida 33306. TMMMG transacts or has transacted business in this district and throughout the United States.

7. Defendant Timeshare Market Pro, Inc. ("TMPI"), is an inactive Florida corporation with its principal place of business at 2652 E. Oakland Park Blvd., Fort Lauderdale, Florida 33306. TMPI transacts or has transacted business in this district and throughout the United States.

8. Defendant Tapia Consulting, Inc. ("Tapia"), is an inactive Florida corporation with its principal place of business at 3000 Sunrise Blvd., Fort Lauderdale, Florida 33204. Tapia transacts or has transacted business in this district and throughout the United States.

9. Defendant Joseph Crapella, also known as Joseph John Philbin ("Crapella"), is a manager of TMMMG. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Crapella resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendant Pasquale Pappalardo is a manager of TMMMG. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

Defendant Pasquale Pappalardo resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

11. Defendant Lisa Tumminia Pappalardo is a manager of TMMMG. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Lisa Tumminia Pappalardo resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

12. Defendant Pasqualino Agovino ("Agovino") is a manager of TMMMG and an officer, director, or owner of Defendant Tapia. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Agovino resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. Defendant Louis Tobias Duany ("Duany") is an officer, director, or owner of TMMMG. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Duany resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

14. Defendant Patricia A. Walker ("Walker") is a manager of TMMMG. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed,

controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Walker resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

15. Defendants TMMMG, TMPI, and Tapia (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, business functions, employees, office locations, and have commingled funds and engaged in a common scheme. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants Crapella, Pasquale Pappalardo, Lisa Tumminia Pappalardo, Agovino, Duany, and Walker have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

## COMMERCE

16. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## DEFENDANTS' BUSINESS ACTIVITIES

17. Since at least 2009, and continuing thereafter, Defendants have engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale services through interstate telephone calls to consumers throughout the United States.

18. Defendants, directly and through their agents, contact consumers through unsolicited telemarketing calls. Defendants target consumers who own timeshare units that have been listed for sale with timeshare resale companies. In contacting these consumers, Defendants often already have information about the consumer's timeshare unit, such as the unit's location or the consumer's asking price.

19. In many cases, Defendants begin the call by representing that they have a buyer for the consumer's timeshare unit and that the sale can be closed within a specified period of time, often 30 to 45 days. Defendants also typically tell consumers the price the purported buyer is willing to pay for the timeshare unit, which frequently is at or above the consumer's asking price.

20. After representing that they have a buyer for the consumer's timeshare unit, Defendants then often confirm that consumers are still interested in selling. When consumers respond affirmatively, Defendants tell consumers that they will be required to pay Defendants a fee in order for the sale to proceed. Defendants often represent that this fee is required to pay for closing costs, title searches, or document processing fees, or that it will be put into escrow for the protection of the buyer should the consumer later back out of the sale. Regardless of the reason given, however, Defendants represent that the consumer's fee will be refunded at the closing of the sale of the timeshare unit.

21. The amount of Defendants' fee varies, but the most typical fee is $1996. If consumers indicate that they cannot afford to pay this fee, Defendants sometimes offer to put them in Defendants' "hardship program," where the fee would be reduced, often to around $999.

22. Believing that Defendants have a buyer for their timeshare unit and that Defendants' fee will be refunded at closing, many consumers agree to pay Defendants' fee. At

that point, consumers often are transferred to another of Defendants' telemarketers, and this telemarketer proceeds to obtain the consumer's payment information. Defendants often represent that these portions of the telemarketing calls are recorded.

23. Defendants typically require that consumers pay Defendants' fee by credit card. Defendants usually charge consumers' cards on the same day that consumers agree to pay Defendants' fee.

24. At the conclusion of the telemarketing call, Defendants tell consumers that they will receive a contract from Defendants and that they should immediately sign and return this contract. Many consumers thereafter receive an e-mail from Defendants containing a link to a Web site where consumers can view Defendants' "welcome letter" and form contract. Some consumers also receive Defendants' "welcome letter" and form contract by U.S. mail. Defendants' "welcome letter" again instructs consumers to sign and return the contract to Defendants. This contract, however, does not relate to a pending sale of the consumer's timeshare unit, as Defendants had represented in the telemarketing call. Instead, the contract provides only that Defendants will advertise the timeshare unit for sale. For instance, Defendants' contract, includes the following terms and conditions:

> I/We the undersigned owner(s) grant(s) to Timeshare Mega Media and Marketing Group, Inc. authorization to advertise on the Intemet and by pooling advertising resources with those of other sellers/renters as well as E-mail, magazines, newspapers, and other advertising sources to maximize exposure to prospective buyers or renters. I/We understand that Timeshare Mega Media and Marketing Group, Inc. is a For-Sale-By-Owner/For-Rent-By Owner advertising company and NOT a real estate broker
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> . . .
>
> 3. [Timeshare Mega Media and Marketing Group, Inc.] has made no representation or guarantees that the property will be sold/rented at any price or within any specific period of time. [. . .]
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> . . .

25. Upon receiving Defendants' contract, many consumers sign and return it, mistakenly believing that it is a contract for the sale of their timeshare unit as Defendants had represented in the telemarketing call. In numerous other instances, however, consumers realize upon reviewing Defendants' contract that it is only a marketing contract, not a contract for the sale of their timeshare unit.

26. Consumers who call Defendants to question the contract are reassured that Defendants have a buyer for the timeshare unit and that consumers need to sign and return the contract to start the sales process. Consumers are told, for example, that the contract is needed "to get the ball rolling" and that sales documents are forthcoming. Relying on Defendants' representations, many consumers then sign and return the contract to Defendants.

27. After they receive consumers' signed contracts, Defendants do not contact those consumers again. They also employ a series of tactics to stall consumers who attempt to contact them. For example, if consumers attempt to contact Defendants by e-mail, Defendants simply ignore those e-mails. If consumers call, Defendants either do not answer or put consumers on hold indefinitely. Requests by consumers for return telephone calls frequently go unanswered. When consumers do get through and are able to speak to Defendants, they often are reassured that the sale of the consumer's timeshare unit is underway but that Defendants are waiting for approval from the buyer's bank. The alleged sale never closes, however, and, as a result, consumers do not receive a refund at closing of the fee they already paid to Defendants.

28. When they realize they have been deceived and that Defendants do not actually have a buyer for their timeshare unit, many consumers initiate chargebacks challenging Defendants' charges to their credit cards. Defendants typically then respond by producing the consumer's signed contract as proof of the consumer's agreement to pay for Defendants'

marketing services. As a result, consumers' chargebacks often are denied, and consumers are then unable to get their money back from Defendants.

## VIOLATIONS OF THE FTC ACT

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

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

## COUNT I

31. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their timeshare resale services, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Defendants have a buyer for the consumer's timeshare unit who will pay a specified price; and

B. Defendants will refund their fee to the consumer at the closing of a sale of the consumer's timeshare unit.

32. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 31of this Complaint:

A. Defendants do not have a buyer for the consumer's timeshare unit who will pay a specified price; and

B. Defendants do not refund their fee to the consumer at the closing of a sale of the consumer's timeshare unit.

33. Therefore, Defendants' representations as set forth in Paragraph 31 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## THE TELEMARKETING SALES RULE

34. 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. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

35. Defendants are "sellers" or "telemarketer[s]" engaged in "telemarketing," as defined by the TSR. 16 C.F.R. §§ 310.2(z), (bb) and (cc).

36. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

37. The TSR prohibits sellers and telemarketers from making any false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

38. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## VIOLATIONS OF THE TELEMARKETING SALES RULE

## COUNT II

39. In numerous instances, in the course of telemarketing their goods and services, Defendants have made false or misleading statements, directly or by implication, to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that:

A. Defendants have a buyer for the consumer's timeshare unit who will pay a specified price; and

B. Defendants will refund their fee to the consumer at the closing of a sale of the consumer's timeshare unit.

40. Defendants' acts or practices, as described in Paragraph 39 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. §§ 310.3(a)(2)(iv) or 310.3(a)(4).

## CONSUMER INJURY

41. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or 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

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

43. 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 resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

## PRAYER FOR RELIEF

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

A. Award Plaintiff 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, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

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Respectfully Submitted,

WILLARD K. TOM
General Counsel

Dated: October 19, 2010

William J. Hodor

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