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AMERICAN FINANCIAL BENEFITS CENTER,
12 AMERITECH FINANCIAL, FINANCIAL EDUCATION
BENEFITS CENTER, and BRANDON DEMOND FRERE

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 FEDERAL TRADE COMMISSION,

Case No. 18-cv-00806-SBA

17 Plaintiff,

**DEFENDANTS AMERICAN FINANCIAL
BENEFITS CENTER, AMERITECH
FINANCIAL, FINANCIAL EDUCATION
BENEFITS CENTER AND BRANDON
DEMOND FRERE’S ANSWER TO
FEDERAL TRADE COMMISSION’S
COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF**

18 v.

19 AMERICAN FINANCIAL BENEFITS
CENTER, a corporation, also d/b/a AFB and
20 AF STUDENT SERVICES; et al.,

21 Defendants.

Complaint filed February 7, 2018

22
23
24 Defendants American Financial Benefits Center, Ameritech Financial, and Financial
25 Education Benefits Center (“Corporate Defendants”) and Brandon Demond Frere (“Frere,” and
26 collectively with the Companies, “Defendants”) hereby answer the Complaint filed by Plaintiff
27 Federal Trade Commission (“Plaintiff”), as follows:
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1 Defendants generally deny each and every allegation of Plaintiff’s Complaint, except
2 those allegations expressly admitted below. Defendants further deny that Plaintiff is entitled to
3 relief of any sort as against Defendants.

4 1. Answering paragraph 1 of the Complaint, Defendants admit that Plaintiff has filed
5 the instant suit against them alleging violations of Section 13(b) of the Federal Trade Commission
6 Act (“FTC Act”), as amended, 15 U.S.C. § 53(b), the Telemarketing and Consumer Fraud and
7 Abuse Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the Telemarketing Sales Rule
8 (“TSR”) promulgated thereunder. Defendants further admit that Plaintiff seeks preliminary and
9 permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of
10 monies paid, disgorgement of allegedly ill-gotten monies, and other equitable relief for
11 Defendants’ acts or practices which Plaintiff contends are in violation of Section 5(a) of the FTC
12 Act, 15 U.S.C. § 45(a), and the TSR. Defendants deny the remaining allegations of paragraph 1.

13 2. Answering paragraph 2 of the Complaint, Defendants admit that this Court has
14 subject matter jurisdiction over the claims alleged in Plaintiff’s Complaint.

15 3. Answering paragraph 3 of the Complaint, Defendants admit that venue lies in this
16 judicial district.

17 4. Answering paragraph 4 of the Complaint, Defendants admit that FTC is an
18 independent agency of the United States Government and states that 15 U.S.C. § 45(a) and 16
19 C.F.R. Part 310 speak for themselves. Paragraph 4 states legal conclusions and argument to
20 which no answer is required. To the extent that any answer is required, Defendants deny such
21 legal conclusions and argument.

22 5. Answering paragraph 5 of the Complaint, Defendants state that 15 U.S.C. §§
23 53(b), 56(a)(2)(A), and 61002(c) speak for themselves. Paragraph 5 states legal conclusions to
24 which no answer is required. To the extent that any answer is required, Defendants deny such
25 legal conclusions and argument.

26 6. Answering paragraph 6 of the Complaint, Defendants admit that American
27 Financial Benefits Center (“AFBC”) was incorporated in the State of California in 2011, and is
28 and has transacted business in the State of California since its incorporation. Defendants further

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1 admit that AFBC has done business at 311 Professional Center Drive, Suite 200, Rohnert Park,
2 CA 94928 and 1900 Powell Street, Suite 600, Emeryville, CA 94608, and that AFBC transacts or
3 has transacted business in this judicial district and in various other locations in the United States.
4 Defendants deny the remaining allegations of paragraph 6. Defendants deny the remaining
5 allegations of paragraph 6.

6 7. Answering paragraph 7 of the Complaint, Defendants admit Ameritech Financial
7 (“Ameritech”) was incorporated in the State California in October 2015, and has transacted
8 business in the State of California since its incorporation. Defendants further admit that
9 Ameritech has done business at 1101 Investment Boulevard, Suite 290, El Dorado Hills, CA
10 95762 and 5789 State Farm Drive, Suite 265, Rohnert Park CA 94928, and that Ameritech
11 transacts or has transacted business in this judicial district and in various other locations in the
12 United States. Defendants deny the remaining allegations of paragraph 7.

13 8. Answering paragraph 8 of the Complaint, Defendants admit that Financial
14 Education Benefits Center (“FEBC”) was incorporated in California in October 2015, has its
15 executive offices at 2010 Crow Canyon Road, Suite 100, San Ramon, CA 94583, and has
16 transacted business in the State of California since its incorporation. Defendants admit that FEBC
17 transacts or has transacted business in this judicial district and in various other locations in the
18 United States. Defendants deny the remaining allegations of paragraph 8.

19 9. Answering paragraph 9 of the Complaint, Defendants admit that Brandon Demond
20 Frere (“Frere”) founded AFBC, Ameritech, FEBC and is the majority owner of the Corporate
21 Defendants and serves as CEO of the Corporate Defendants. Defendants further admit that Frere
22 resides in this judicial district and transacts or has transacted business in this judicial district and
23 in various other locations in the United States.

24 10. Answering paragraph 10 of the Complaint, Defendants admit that AFBC,
25 Ameritech, and FEBC share common ownership, officers, managers, and certain employees.
26 Ameritech’s application to the BBB speaks for itself. Defendants further admit that Ameritech
27 and FEBC offer their services to consumers during the same initial telephone enrollment
28 conversations, and each company offers a separate contract to consumers that agree to proceed

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1 with either of their services during those conversations. Paragraph 10 states legal conclusions and
2 argument to which no answer is required. To the extent that any answer is required, Defendants
3 deny such legal conclusions and argument. Defendants deny the remaining allegations of
4 paragraph 10.

5 11. Answering paragraph 11 of the Complaint, Defendants state that 15 U.S.C. § 44
6 speaks for itself. Paragraph 11 states legal conclusions to which no answer is required. To the
7 extent that any answer is required, Defendants deny such legal conclusions.

8 12. Answering paragraph 12 of the Complaint, Defendants state that the Corporate
9 Defendants have sent mailers to consumers. Defendants further state that the content of any
10 mailers speak for themselves. Defendants admit that they charge fees of \$600-\$800 to assist
11 consumers to apply for federal student loan repayment programs. Defendants lack knowledge or
12 information sufficient to form a belief as to the truth of the allegations regarding consumers' loan
13 balances, and on that basis deny them. Defendants deny the remaining allegations of paragraph
14 12.

15 13. Answering paragraph 13 of the Complaint, Defendants admit that Defendants
16 AFBC and FEBC charge monthly fees to their clients for a membership service that includes
17 financial education resources, among other services. Defendants further admit that consumers
18 have collectively paid over \$28 million for the services offered by Corporate Defendants over the
19 last six years, which amount is significantly less than the amount of savings consumers have
20 realized over that same time period by virtue of their enrollment in federal student loan
21 forgiveness or income reduction plans. Defendants lack knowledge or information sufficient to
22 form a belief as to the truth of the allegations regarding consumers' beliefs regarding the
23 application of the monthly fees, and on that basis deny them. Defendants deny the remaining
24 allegations of paragraph 13.

25 14. Answering paragraph 14 of the Complaint, Defendants admit that student loan
26 debt is a substantial class of consumer debt, the second largest class of consumer debt in the
27 United States. Defendants lack knowledge or information sufficient to form a belief as to the
28 truth of the remaining allegations in paragraph 14, and on that basis deny them.

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1 15. Answering paragraph 15 of the Complaint, Defendants state that the Department
2 of Education (“ED”) administers various federal student loan forgiveness and discharge
3 programs, with various eligibility requirements, including the Borrower Defense to Repayment
4 (“BDR”) program, which terms of such programs speak for themselves. Defendants lack
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
6 paragraph 15, and on that basis deny them.

7 16. Answering paragraph 16 of the Complaint, Defendants state that the ED
8 administers Teacher Loan Forgiveness and the Public Service Loan Forgiveness programs.
9 Defendants state that the terms of such programs speak for themselves. Defendants lack
10 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
11 paragraph 15, and on that basis deny them.

12 17. Answering paragraph 17 of the Complaint, Defendants state that the ED offers
13 income-driven repayment (“IDR”) programs. Defendants state that the terms of those programs
14 speak for themselves. Defendants admit that IDR programs may allow borrowers to limit their
15 monthly payments for certain federal student loan programs based on the borrower’s income
16 level, and that borrowers in those programs are required to provide annual re-certifications to
17 remain in those programs. Defendants lack knowledge or information sufficient to form a belief
18 as to truth of the remaining allegations in paragraph 17, and on that basis deny them.

19 18. Answering paragraph 18 of the Complaint, Defendants admit that a borrower’s
20 income affects the monthly payments due under an IDR program. Defendants also state that the
21 terms of any IDR programs speak for themselves. Defendants lack knowledge or information
22 sufficient to form a belief as to the truth of the remaining allegations in paragraph 18, and on that
23 basis deny them.

24 19. Answering paragraph 19 of the Complaint, Defendants state that the ED’s student
25 loan repayment and/or forgiveness programs speak for themselves. Defendants admit that the ED
26 does not require consumers to use the assistance of a third party to apply for its federal student
27 loan repayment and/or forgiveness programs nor does it charge application fees.

28 20. Answering paragraph 20 of the Complaint, Defendants state that the ED’s student

1 loan repayment and/or forgiveness programs speak for themselves. Defendants admit that at
2 times the ED will grant forbearance and that a loan in forbearance will continue to accrue interest.
3 Defendants lack knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations in paragraph 20 and on that basis deny them.

5 21. Answering paragraph 21 of the Complaint, Defendants admit that the ED permits
6 the consolidation of federal student loans. Defendants state that the ED's programs speak for
7 themselves. Defendants lack knowledge or information sufficient to form a belief as to the truth
8 of the remaining allegations in paragraph 21 and on that basis deny them.

9 22. Answering paragraph 22 of the Complaint, Defendants admit that since 2014 one
10 or more of the Corporate Defendants have disseminated or caused to be disseminated mailers to
11 consumers within the United States at various times. Defendants state that the mailers speak for
12 themselves. Answering paragraph 22(a)-(e) of the Complaint, Defendants state that the exhibits
13 speak for themselves, and that the FTC cites only a limited sample of the content from those
14 mailers.

15 23. Answering paragraph 23 of the Complaint, Defendants state that the mailers and
16 exhibits attached as Exhibits A-E speak for themselves.

17 24. Answering paragraph 24 of the Complaint, Defendants state that the language
18 included in the mailers attached as Exhibits B, C and D-1 speak for themselves. Defendants deny
19 the remaining allegations of paragraph 24.

20 25. Answering paragraph 25 of the Complaint, Defendants state that the language in
21 the mailers speak for themselves. Defendants also state that numerous mailers include one or
22 more of Corporate Defendants' names.

23 26. Answering paragraph 26 of the Complaint, Defendants state that the language in
24 the mailers speak for themselves, but that the mailers list a toll-free phone number. Defendants
25 admit that when consumers call Ameritech or AFBC, they are connected with an account
26 specialist. Defendants state that any pre-recorded messages speak for themselves.

27 27. Answering paragraph 27 of the Complaint, Defendants deny the allegations
28 therein.

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1 28. Answering paragraph 28 of the Complaint, Defendants state that any recorded
2 conversation speaks for itself. Defendants deny the remaining allegations in paragraph 28.

3 29. Answering paragraph 29 of the Complaint, Defendants state that the language in
4 34 C.F.R. § 682.215(a)(3) speaks for itself. Defendants further state that the definition of family
5 size contained on the federal IDR application is the definition incorporated into Corporate
6 Defendants’ scripts. Defendants further state that paragraph 29 states legal conclusions to which
7 no answer is required. To the extent that any answer is required, Defendants deny such legal
8 conclusions.

9 30. Answering paragraph 30 of the Complaint, Defendants admit that the family size
10 listed by a consumer will impact his or her eligibility in an IDR program. Defendants deny
11 making misrepresentations to consumers or otherwise about family-size requirements.
12 Defendants further state that paragraph 30 states legal conclusions and argument to which no
13 answer is required. To the extent that any answer is required, Defendants deny such legal
14 conclusions and argument.

15 31. Answering paragraph 31 of the Complaint, Defendants deny making false or
16 unsubstantiated representations about being able to procure a permanent reduction in consumers’
17 monthly payments. Defendants admit that monthly IDR program payments are based on a
18 borrowers’ income and that the program requires annual recertification, and state that the terms of
19 the ED’s federal student loan repayment programs speak for themselves. Defendants further state
20 that paragraph 31 states legal conclusions and argument to which no answer is required. To the
21 extent that any answer is required, Defendants deny such legal conclusions and argument.
22 Defendants lack knowledge or information sufficient to form a belief as to the truth of the
23 allegations that “in many cases consumers’ incomes will rise over the years-long repayment
24 period, and as consumer’ incomes rise so will their monthly payments,” and on that basis deny
25 them.

26 32. Answering paragraph 32 of the Complaint, Defendants admit that once consumers
27 decide to apply to a federal loan repayment program, and supply the necessary information,
28 Defendants email the consumer links to contracts to be signed electronically, and further that after

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1 completing their discussion with the account specialist, the consumer is transferred to the
2 verification department. Defendants state that the account specialist scripts and any recorded
3 conversations speak for themselves. Defendants deny the remaining allegations of paragraph 32.

4 33. Answering paragraph 33 of the Complaint, Defendants admit charging certain
5 consumers fees of \$600-\$800 for federal student loan repayment or forgiveness program
6 document preparation services, which may be paid in installments. Defendants deny the
7 remaining allegations of paragraph 33.

8 34. Answering paragraph 34 of the Complaint, Defendants admit charging consumers
9 a monthly fee for membership in AFBC and/or FEBC which fee may range from \$49 to \$99.
10 Defendants state that any recorded conversations with consumers speak for themselves.
11 Defendants state that Exhibit F speaks for itself. Defendants deny the remaining allegations of
12 paragraph 34.

13 35. Answering paragraph 35 of the Complaint, Defendants admit charging consumers
14 a monthly fee for membership in AFBC and/or FEBC. Defendants state that the recorded
15 conversations with consumers speak for themselves. Defendants state that Exhibits G and H
16 speak for themselves. Defendants lack knowledge or information sufficient to form a belief as to
17 the truth of the allegations as to what “many consumers believe,” and on that basis deny them.
18 Defendants deny the remaining allegations of paragraph 35.

19 36. Answering paragraph 36 of the Complaint, Defendants state that Exhibit I speaks
20 for itself. Defendants deny the remaining allegations of paragraph 36.

21 37. Answering paragraph 37 of the Complaint, Defendants admit that based on the
22 terms of contracts executed by the client the Corporate Defendants have occasionally declined to
23 provide a refund to certain consumers, or have paid a refund to a consumer that is less than the
24 total amount paid by that consumer. Defendants deny that it is appropriate to characterize it as
25 happening often. Defendants deny the remaining allegations of paragraph 37.

26 38. Answering paragraph 38 of the Complaint, Defendants state that paragraph 38
27 states legal conclusions and argument to which no answer is required. To the extent that any
28 answer is required, Defendants deny such legal conclusions and argument.

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1 39. Answering paragraph 39 of the Complaint, Defendants Frere and AFBC admit that
2 Frere is the majority owner of AFBC. Frere and AFBC admit that Frere incorporated AFBC in
3 2011 and has served as the company’s CEO, Secretary, CFO, and sole Director since that time.
4 Frere and AFBC further admit that Frere has signed contracts with consumers on behalf of AFBC
5 as a “Managing Director” of the company. Paragraph 39 states legal conclusions and argument to
6 which no answer is required. To the extent that any answer is required, Defendants deny such
7 legal conclusions and argument. Defendants Ameritech and FEBC lack knowledge or
8 information sufficient to form a belief as to the truth of the allegations in paragraph 39, and on
9 that basis deny them.

10 40. Answering paragraph 40 of the Complaint, Defendants Frere and Ameritech admit
11 that Frere is the majority owner of Ameritech. Frere and Ameritech admit that Frere incorporated
12 Ameritech in 2015 and has served as the company’s CEO, Secretary, CFO, and sole Director
13 since that time. Paragraph 40 states legal conclusions and argument to which no answer is
14 required. To the extent that any answer is required, Defendants deny such legal conclusions and
15 argument. Defendants AFBC and FEBC lack knowledge or information sufficient to form a
16 belief as to the truth of the allegations in paragraph 40, and on that basis deny them.

17 41. Answering paragraph 41 of the Complaint, Defendants Frere and FEBC admit that
18 Frere is the majority owner of FEBC. Frere and FEBC admit that Frere incorporated FEBC in
19 2015 and has served as the company’s CEO, Secretary, CFO, and sole Director since that time.
20 Paragraph 41 states legal conclusions and argument to which no answer is required. To the extent
21 that any answer is required, Defendants deny such legal conclusions and argument. Defendants
22 AFBC and Ameritech lack knowledge or information sufficient to form a belief as to the truth of
23 the allegations in paragraph 41, and on that basis deny them.

24 42. Answering paragraph 42 of the Complaint, Defendants Frere, AFBC and
25 Ameritech admit that Frere has been a signatory on AFBC’s and Ameritech’s depository bank
26 accounts. Paragraph 42 states legal conclusions and argument to which no answer is required. To
27 the extent that any answer is required, Defendants deny such legal conclusions and argument.

28 43. Answering paragraph 43 of the Complaint, Defendant Frere admits that in or about

1 late 2015 he submitted an application to the Better Business Bureau serving Northern California
 2 (“BBB”) seeking accreditation for Ameritech. Defendant Frere further admits that in or about
 3 June 2016 the BBB sent a letter to Frere concerning Ameritech, which letter speaks for itself, and
 4 which was just one of dozens of communications Defendants have had with the BBB. Frere
 5 lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the
 6 BBB “continue[d] to express concerns about Ameritech’s business practices in 2016,” and on that
 7 basis deny them. Defendants AFBC, Ameritech, and FEBC lack knowledge or information
 8 sufficient to form a belief as to the truth of the allegations in paragraph 43, and on that basis deny
 9 them.

10 44. Answering paragraph 44 of the Complaint, Defendants Frere admits that he is the
 11 owner and a “high-ranking corporate officer” of the Corporate Defendants who participates in
 12 their daily activities. Defendants deny the remaining allegations of paragraph 44.

13 45. Answering paragraph 45 of the Complaint, Defendants state that the FTC Act, 15
 14 U.S.C. § 45(a) speaks for itself.

15 46. Answering paragraph 46 of the Complaint, Defendants state that Section 5(a) of
 16 the FTC Act speaks for itself.

17 **Count I**

18 47. Answering paragraph 47 of the Complaint, and each of its subparts, Defendants
 19 deny the allegations therein. Paragraph 47 states legal conclusions and argument to which no
 20 answer is required. To the extent that any answer is required, Defendants deny such legal
 21 conclusions and argument.

22 48. Answering paragraph 48 of the Complaint, Defendants deny the allegations
 23 therein.

24 49. Answering paragraph 49 of the Complaint, Defendants deny violating any
 25 provision of the FTC Act at any time, including but not limited to Section 5(a) of the FTC Act, 15
 26 U.S.C. § 45(a). Paragraph 49 states legal conclusions and argument to which no answer is
 27 required. To the extent that any answer is required, Defendants deny such legal conclusions and
 28 argument.

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Count III

58. Answering paragraph 58 of the Complaint and each of its subparts, Defendants deny the allegations therein. Paragraph 58 states legal conclusions and argument to which no answer is required. To the extent that any answer is required, Defendants deny such legal conclusions and argument.

59. Answering paragraph 59 of the Complaint, Defendants deny violating any provision of the TSR at any time, including but not limited to Section 310.3(a)(2)(x), 16 C.F.R. § 310.3(a)(2)(x). Paragraph 59 states legal conclusions and argument to which no answer is required. To the extent that any answer is required, Defendants deny such legal conclusions and argument.

60. Answering paragraph 60 of the Complaint, Defendants deny the allegations therein. Paragraph 60 states legal conclusions and argument to which no answer is required. To the extent that any answer is required, Defendants deny such legal conclusions and argument.

61. Answering paragraph 61 of the Complaint, Defendants state that the FTC Act, 15 U.S.C. § 53(b) speaks for itself. Paragraph 61 states legal conclusions and argument to which no answer is required. To the extent that any answer is required, Defendants deny such legal conclusions and argument.

62. Answering paragraph 62 of the Complaint, Defendants state that Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), speaks for itself. Paragraph 62 states legal conclusions and argument to which no answer is required. To the extent that any answer is required, Defendants deny such legal conclusions and argument.

PRAYER FOR RELIEF

63. Defendants deny that Plaintiff is entitled to the relief it seeks in its Prayer for Relief.

AFFIRMATIVE DEFENSES

Allegations Common to all Affirmative Defenses

64. When Frere founded AFBC, it provided a membership service that provided both student loan document preparation assistance and services that assist consumers with their

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1 finances, health and well-being. In late 2015, Frere formed two separate companies — Ameritech
2 and FEBC — to provide the services that AFBC had been providing to its customers.

3 65. Beginning in early 2016, Ameritech has provided consumers with student loan
4 document preparation services, and FEBC has offered monthly membership services offering
5 consumers tools, products, and services to assist with their finances, health, and well-being.

6 66. Until this lawsuit, the Companies were accredited by the Oakland BBB and held
7 ratings of A (FEBC and AFBC) and B+ (Ameritech).

8 67. When consumers visit Ameritech’s website, they are greeted with a popup window
9 and cannot proceed without acknowledging a set of prominent disclosures, including that “We are
10 not a government agency, the Department of Education, or your loan servicer;” and “We do not
11 make loan payments on your behalf and loans remain in your name;” and that borrowers can “Do
12 it yourself without a fee – all programs are freely available for enrollment through the Department
13 of Education.” AFBC’s website contains similar disclosures.

14 68. When consumers call Ameritech, and formerly AFBC, the sales personnel
15 (“Account Specialists”) are required to strictly follow scripts that have been reviewed and
16 approved by outside regulatory counsel. The Account Specialists are provided detailed guideline
17 checklists, a list of “Bad” statements which they are prohibited from saying, and a “Dos and
18 Don’ts” policy for when complex situations arise. The Account Specialist’s conformity with
19 these standards is monitored by the Compliance Department, as described further below.

20 69. Ameritech’s scripts require the Account Specialists to disclose that Ameritech is
21 not affiliated with the ED; that the consumer may apply for a loan repayment or forgiveness
22 program on their own for free; that Ameritech is not a loan servicer, will not pay the borrower’s
23 loans, charges for its document preparation services, and places the customer’s funds in a third
24 party escrow account to be released only after the company has successfully performed its work.
25 The Account Specialist is also required to read — verbatim — a definition of “family size” to the
26 callers that is found in the application for enrollment in the IBR/IDR programs. The Account
27 Specialist asks whether the caller has federal student loans; whether the loans are current or in
28

1 default; the amount outstanding; the caller's approximate annual income; their self-reported
2 family size; and other background information.

3 70. During the call, representatives are required to expressly disclose to consumers
4 that FEBC's monthly membership services are separate from the document preparation services,
5 and that FEBC charges separately, each month, for its services. This separation is reinforced by
6 the fact that there are separate contracts for the services to be provided by Ameritech Financial
7 and FEBC, and by separate payment authorization forms.

8 71. After the consumer's information has been collected, the Ameritech representative
9 turns the call over to the verification department. Every call is recorded, and Ameritech's
10 Compliance Department monitors enrollment calls and subsequent calls with consumers. Every
11 Account Specialist is monitored weekly, and their compensation is tied to their compliance with
12 company policy.

13 72. During enrollment calls, Account Specialists provide consumers with the written
14 contracts they will need to complete in order to apply for federal student loan relief programs.
15 Ameritech's Document Preparation and Service Agreement ("Ameritech Agreement") includes
16 key disclosures that require consumers to acknowledge, among other things, that they "HAVE
17 NOT BEEN ADVISED BY AMERITECH FINANCIAL, . . . TO FOREGO A STUDENT
18 LOAN PAYMENT."

19 73. Not every caller becomes an Ameritech customer. If the caller's responses
20 indicate that they are not eligible for a student loan repayment program, or are not interested in
21 working with Ameritech, the call terminates. Once it appears that the consumer may be eligible
22 and expresses interest in working with Ameritech, however, a dedicated third party escrow
23 account is set up to receive the prepaid document preparation fees, as disclosed in the Ameritech
24 Agreement. The funds are not released to Ameritech from the escrow account until the borrower
25 has been accepted into a loan repayment program and has made their first payment under that
26 program. The account is managed by a third party, which deposits the funds into a trust account
27 at an FDIC-insured depository institution.
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1 74. Not every consumer who calls AFBC or Ameritech enrolls in FEBC. Further, the
2 FEBC membership agreements describe the services offered, and explain that FEBC is a separate
3 company from Ameritech, and is not affiliated with the government. Members are informed that
4 they “may cancel this contract within thirty (30) days of signing and receive a full refund for all
5 sums paid to FEBC” or at any time on ten days’ written notice. FEBC emails its clients every two
6 weeks to highlight the services and discounts provided, and a vast majority of FEBC clients
7 return to the website after their initial orientation.

8 **AFFIRMATIVE DEFENSES**

9 75. By setting forth the following affirmative defenses, Defendants do not assume the
10 burden of proving any fact, issue, or element of any of Plaintiff’s claims for relief whether such
11 burden properly and solely belongs to the Plaintiff. Moreover, nothing stated herein is intended
12 to be construed as an acknowledgement that any particular issue or subject matter is relevant to
13 Plaintiff’s allegations. Nor shall anything stated or unstated constitute an admission of any kind.

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(No Debt Relief Services)**

16 76. Defendants reallege and incorporate by reference the allegations of paragraphs 1-
17 75 of this Answer and Affirmative Defenses as though fully set forth herein.

18 77. As a separate and affirmative defense to the Complaint, Defendants are informed
19 and believe and therefore allege that they are not liable for any violations of the TSR in
20 connection with their provision of document preparation services as alleged in the Complaint
21 because they do not provide debt relief services.

22 78. In 1994, Congress enacted the Telemarketing Consumer Fraud and Abuse
23 Prevention Act, 15 U.S.C. § 6101, *et seq.* (“Telemarketing Act”). The Telemarketing Act
24 authorized the FTC to regulate deceptive and abusive commercial telemarketing acts and
25 practices intended to induce the purchase of goods or services. 15 U.S.C. § 6102(a)(3)(C). The
26 Act further directed the FTC to promulgate regulations to “prohibit deceptive telemarketing acts
27 or practices and other abusive telemarketing acts or practices.” 15 U.S.C. § 6102(a)(1).
28

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1 85. As a separate and affirmative defense to the Complaint, Defendants are informed
2 and believe and therefore allege that they are not liable for any violation of the TSR in connection
3 with accepting advance fees for their document preparation services as alleged in the Complaint
4 because at all times they complied with applicable law.

5 86. The TSR prohibits the collection of advance fees from customers except under
6 certain specified circumstances.

7 87. Defendants do not provide debt relief services to their customers. However, even
8 if the Defendants did provide such services, they are in compliance with the provisions of the
9 TSR.

10 88. The TSR prohibits a seller or telemarketer from “[r]equesting or receiving
11 payment of any fee or consideration for any debt relief service until . . . [t]he seller or
12 telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt
13 pursuant to a settlement agreement, debt management plan, or other such valid contractual
14 agreement executed by the customer” and “[t]he customer has made at least one payment”
15 pursuant to such agreement, plan, or contract. 16 C.F.R. § 310.4(a)(5)(i).

16 89. Despite the foregoing limitations, the TSR provides that a company “may request[]
17 or require[] the customer to place funds in an account to be used for the debt relief provider’s fees
18 and for payments to creditors or debt collectors in connection with the renegotiation, settlement,
19 reduction, or other alteration of the terms of payment or other terms of a debt,” provided that the
20 following criteria are satisfied.

- 21 a. The funds are held in an account at an insured financial institution;
- 22 b. The customer owns the funds held in the account and is paid
23 accrued interest on the account, if any;
- 24 c. The entity administering the account is not owned or controlled by,
25 or in any way affiliated with, the debt relief service;
- 26 d. The entity administering the account does not give or accept any
27 money or other compensation in exchange for referrals of business
28 involving the debt relief service; and

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e. The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer’s request.

TSR, 16 C.F.R. § 310.4(5)(ii).

90. Defendants allege that they understood and believed that the funds collected for the document preparation services complied with the TSR because:

- a. Ameritech arranged for each customer who signed up and prepaid for the document preparation services to have a dedicated account maintained by a third-party provider at an FDIC-insured financial institution into which the customer’s fees would be deposited;
- b. The accounts belonged to the customers;
- c. The escrow agent was an independent third party, unaffiliated with Ameritech and the account is not owned or controlled by, or in any way affiliated with, Ameritech; and
- d. Customers can withdraw the funds in the account at any time.

91. Finally, Ameritech did not seek to withdraw any fees from the dedicated escrow accounts until the customer’s student loan had been accepted into an IDR, IBR or other ED student loan repayment program.

92. Accordingly, because Defendants have complied with the advance fee provisions of the TSR, Plaintiff cannot recover against Defendants for violating the advance fee provisions of the TSR.

THIRD AFFIRMATIVE DEFENSE
(Disclosure to Consumer)

93. Defendants reallege and incorporate by reference the allegations of paragraphs 1-92 of this Answer and Affirmative Defenses as though fully set forth herein.

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1 100. Defendants record their conversations with consumers to avoid any confusion or
2 uncertainty, for training purposes, and to permit the Compliance Department and management to
3 review such calls for compliance with company policies and legal and regulatory requirements.

4 101. Ameritech has also developed a fully-staffed Compliance Department to review
5 and monitor recorded communications with consumers and take necessary disciplinary action.

6 102. Violations of the Companies’ rules are grounds for progressive discipline up to
7 and including termination. Defendants have in fact disciplined employees for violating the
8 Companies’ requirements to follow the approved scripts as well as other rules and policies.

9 103. Defendants developed their compliance program and created, staffed, funded, and
10 operate the Compliance Department to ensure that only truthful and complete information is
11 provided to consumers.

12 104. The foregoing actions and others were taken in good faith and with the intent to
13 comply with applicable laws and regulations.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 **(Statute of Limitations)**

16 105. Defendants reallege and incorporate by reference the allegations of paragraphs 1-
17 104 of this Answer and Affirmative Defenses as though fully set forth herein.

18 106. As a separate and affirmative defense, Plaintiff’s claims are barred in whole or in
19 part by the applicable statutes of limitations. Specifically, Plaintiff’s claims are barred in part or
20 in whole by the 3-year statute of limitations under 15 U.S.C. § 57(d), or alternatively by the 4-
21 year statute of limitations under 28 U.S.C. § 1658.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 **(Laches)**

24 107. Defendants reallege and incorporate by reference the allegations of paragraphs 1-
25 106 of this Answer and Affirmative Defenses as though fully set forth herein.

26 108. As a separate and affirmative defense, Plaintiff’s claims are barred in part or in
27 whole by the doctrine of laches because Plaintiff delayed bringing any action despite having full
28 knowledge of the corporate actions of Defendants for over a year before bringing this lawsuit.

1 Specifically, Plaintiff refused to respond to a letter sent by corporate Defendants on December 30,
 2 2016 to the Chairwoman of Plaintiff, Edith Ramirez, in which the Corporate Defendants sought
 3 guidance from the FTC regarding their standard business practices, and provided samples of their
 4 mailers and the scripts used by Account Specialists. Plaintiff understood that it would be
 5 important to respond to the letter because they had already opened an investigation into Corporate
 6 Defendants. Despite that, Plaintiff sat silently and did not respond to the letter at all. In addition,
 7 Plaintiff refused to file its lawsuit promptly after Defendants first filed a lawsuit against Plaintiff
 8 on August 18, 2017 for declaratory relief. Plaintiff was considering the filing of a lawsuit, as it
 9 sent a draft complaint to Defendants on October 3, 2017, yet waited over four months to file its
 10 Complaint in this action. Furthermore, Plaintiff engaged in an indiscriminate industry “sweep”
 11 that it described as “Game of Loans,” and only decided to sue Defendants after gross delay,
 12 prejudice to Defendants and in response to Defendants’ suit for declaratory relief. In short, it
 13 would be inequitable for Plaintiff to seek equitable relief, including an injunction and the
 14 appointment of a receiver, when it had full knowledge of Corporate Defendants business practices
 15 yet refused to provide any guidance about what it thought the Corporate Defendants were doing
 16 wrong or how such actions could be corrected, and refused to file any lawsuit.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

19 109. Defendants reallege and incorporate by reference the allegations of paragraphs 1-
 20 108 of this Answer and Affirmative Defenses as though fully set forth herein.

21 110. As a separate and affirmative defense, Plaintiff’s claims are barred in part or in
 22 whole by the doctrine of estoppel because Plaintiff delayed bringing any action despite having
 23 full knowledge of the corporate actions of Defendants for over a year before bringing this lawsuit.
 24 Specifically, Plaintiff refused to respond to a letter sent by corporate Defendants on December 30,
 25 2016 to the Chairwoman of Plaintiff, Edith Ramirez, in which the Corporate Defendants sought
 26 guidance from the FTC regarding their standard business practices, and provided samples of their
 27 mailers and the scripts used by Account Specialists. Plaintiff understood that it would be
 28 important to respond to the letter because they had already opened an investigation into Corporate

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1 Defendants. Despite that, Plaintiff sat silently and did not respond to the letter at all. In addition,
2 Plaintiff refused to file its lawsuit promptly after Defendants first filed a lawsuit against Plaintiff
3 on August 18, 2017 for declaratory relief. Plaintiff was considering the filing of a lawsuit, as it
4 sent a draft complaint to Defendants on October 3, 2017, yet waited over four months to file its
5 Complaint in this action. Furthermore, Plaintiff engaged in an indiscriminate industry “sweep”
6 that it described as “Game of Loans,” and only decided to sue Defendants after gross delay,
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8 would be inequitable for Plaintiff to seek equitable relief, including an injunction and the
9 appointment of a receiver, when it had full knowledge of Corporate Defendants business practices
10 yet refused to provide any guidance about what it thought the Corporate Defendants were doing
11 wrong or how such actions could be corrected, and refused to file any lawsuit.

EIGHTH AFFIRMATIVE DEFENSE

(Offset)

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14 111. Defendants reallege and incorporate by reference the allegations of paragraphs 1-
15 110 of this Answer and Affirmative Defenses as though fully set forth herein.

16 112. As a separate and affirmative defense to the Complaint, Defendants allege that any
17 monetary relief — whether by rescission, restitution, refund, disgorgement, or otherwise — that
18 the FTC might receive is subject to offset by the benefits received by customers, and/or
19 chargebacks or refunds paid to customers.

20 113. By assisting with identifying student loan programs for which they are eligible,
21 preparing necessary documentation, walking them through the process, and assisting with
22 recertifications, AFBC and Ameritech have assisted tens of thousands of customers to obtain
23 reduced monthly payments for their student loans.

24 114. In the aggregate, AFBC and Ameritech have assisted customers to save tens of
25 millions of dollars in student loan payments.

26 115. If this Court were to find the Defendants liable for any of the alleged violations,
27 they would be entitled to an offset to reflect the benefit to customers, as well as any refunds or
28 chargebacks.

RESERVATION OF FURTHER AFFIRMATIVE DEFENSES

Defendants lack sufficient information of all facts and evidence surrounding Plaintiff’s investigation, and regarding Corporate Defendants’ business practices in light of the claims raised by Plaintiff, and therefore are unable to ascertain at this time all affirmative defenses potentially available to them. Thus, Defendants hereby give notice that they intend to rely upon such other and further affirmative defenses as may become available during discovery proceedings in this case, and Defendants hereby reserve their right to seek the Court’s permission to amend their Answer to assert such affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, having responded to Plaintiff’s Complaint and having stated their affirmative defenses, Defendants pray that:

1. Judgment be entered against Plaintiff and in favor of Defendants and that Plaintiff take nothing by its Complaint;
2. The Court award Defendants their reasonable costs, expenses, and attorneys’ fees as permitted by law including, but not limited to, pursuant to the Equal Access to Justice Act (5 U.S.C. § 504); and
3. The Court award Defendants such further and other relief as the Court may deem just and proper.

Dated: August 29, 2018

ROPERS, MAJESKI, KOHN & BENTLEY

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