

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

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**JUSTIN RAMSEY**, individually and as an officer of Data Guru LLC, Tailbone Security LLC, and Prime Marketing LLC;

**BRIAN OFFNER**, individually and as an officer of Data Guru LLC, Tailbone Security LLC, and Leading Apex LLC,

**CHRISTOPHER HERGHELEGIU**, individually and as an officer of Data Guru LLC and Tailbone Security LLC

Case No. 9:17cv80032

**DATA GURU LLC**, a Florida limited liability company,

**TAILBONE SECURITY LLC**, a Florida limited liability company,

**LEADING APEX LLC**, a Pennsylvania limited liability company,

and

**PRIME MARKETING LLC**, a Delaware limited liability company,

Defendants.

**COMPLAINT FOR CIVIL PENALTIES,  
PERMANENT INJUNCTION, AND OTHER RELIEF**

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

1. The FTC brings this action under Sections 5(a), 5(m)(1)(A), and 13(b), and 16(a), of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as amended, 16 C.F.R. Part 310. Defendants violated the law by initiating or causing the initiation of calls to numbers on the Do Not Call Registry, and the use of pre-recorded calls or robocalls.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (c)(2) and 1395(a), and 15 U.S.C. § 53(b). Defendants reside in or transact business in this District or transacted business in this District during the time they engaged in the unlawful activity alleged below.

### **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 TSR, 15 U.S.C. § 6105.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violation of the FTC act and the TSR, 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). The FTC is also authorized to obtain civil penalties for violations of the TSR, 15 U.S.C. §§ 45(m)(1)(A), 56(a).

**DEFENDANTS**

6. Defendant Data Guru LLC (“Data Guru”) is a Florida limited liability company with its principal place of business at 200 Knuth Blvd., Suite #206, Boynton Beach, Florida. Data Guru transacts or has transacted business in this district and throughout the United States.

7. Defendant Tailbone Security LLC (“Tailbone Security”) is a Florida limited liability company with its principal place of business at 200 Knuth Blvd., Suite #206, Boynton Beach, Florida. Tailbone Security transacts or has transacted business in this district and throughout the United States.

8. Defendant Leading Apex LLC (“Leading Apex”) is a Florida limited liability company with its principal place of business at 200 Knuth Blvd., Suite #216, Boynton Beach, Florida. Leading Apex transacts or has transacted business in this district and throughout the United States.

9. Defendants Data Guru, Tailbone Security, and Leading Apex operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Data Guru, Tailbone Security, and Leading Apex have common control, share office space, owners, and Managing Members, their business is conducted through a maze of interrelated companies, and no real distinction exists between the entities.

10. Defendant Brian Offner is a Managing Member and Manager of Data Guru and Tailbone Security, and the sole Managing Member and Manager of Leading Apex. In connection with the matters alleged herein, Offner resides in or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, Offner had the authority and responsibility to prevent or correct unlawful telemarketing practices of

Data Guru, Tailbone Security, and Leading Apex, and formulated, directed, controlled, or participated in the acts and practices of Data Guru, Tailbone Security, and Leading Apex, including the acts and practices set forth in this Complaint.

11. Defendant Christopher Herghelegiu is a Managing Member and Manger of Data Guru and Tailbone Security. In connection with the matters alleged herein, Herghelegiu resides in or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, Herghelegiu had the authority and responsibility to prevent or correct unlawful telemarketing practices of Data Guru and Tailbone Security, and has formulated, directed, controlled, or participated in the acts and practices of Data Guru and Tailbone Security, including the acts and practices set forth in this Complaint.

12. Defendant Justin Ramsey is a Managing Member and Manager of Tailbone Security and Data Guru. He is also a manager of employees of Data Guru, Tailbone Security, and Leading Apex. In connection with the matters alleged herein, Ramsey resides in or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, Ramsey has formulated, directed, controlled, or participated in the acts and practices of the Data Guru, Leading Apex, Tailbone Security, including the acts and practices set forth in this Complaint. Defendant Ramsey is also an owner and manager of Defendant Prime Marketing LLC.

13. Because Data Guru, Tailbone Security and Leading Apex operated as a common enterprise, under the joint management and control of Defendants Ramsey, Offner, and Herghelegiu, each of them is jointly and severally liable for the acts and practices alleged below that constitute their common enterprise (the “Common Enterprise Corporate Defendants”).

14. Defendant Prime Marketing LLC (“Prime Marketing”) is a limited liability company with its principal place of business at 721 Leister Drive, Lutherville, Maryland. Prime Marketing is owned and managed by Defendant Justin Ramsey. Prime Marketing transacts or has transacted business in this district and throughout the United States.

**THE TELEMARKETING SALES RULE  
AND THE NATIONAL DO NOT CALL REGISTRY**

15. Congress directed the Commission to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Commission adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

16. Among other things, the 2003 amendments to the TSR established a do-not-call registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at [donotcall.gov](http://donotcall.gov).

17. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at [donotcall.gov](http://donotcall.gov), or by otherwise contacting law enforcement authorities.

18. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov), to pay the fee(s) if required, and to download the numbers not to call.

19. Under the TSR, a “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff). A “seller” means any person who, in connection with a telemarketing transaction,

provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. *Id.* § 301.2(dd).

20. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(x).

21. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry unless the seller (1) has obtained the consumer’s express agreement, in writing, to place such calls, or (2) has an established business relationship with that consumer, and the consumer has not stated that he or she does not wish to receive such calls. 16 C.F.R. §§ 310.2(q), 310.4(b)(1)(iii)(B). Valid written consent to receive a live telemarketing call (i.e., a telemarketing call that does not deliver a prerecorded message) to a number on the Registry requires: (i) a writing signed by the consumer, (ii) clearly evidencing authorization to receive calls placed on behalf of a specific seller, and (iii) stating the telephone number to which such calls may be placed. 16 C.F.R. § 310.4(b)(1)(iii)(B)(1).

22. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call that delivers a prerecorded message (“robocall”), unless the seller has obtained the consumer’s express agreement, in writing, to receive such calls. 16 C.F.R. § 310.4(b)(1)(v). Such express agreement must include: (1) a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person; (2) that the seller did not require the agreement to be executed as a condition of purchasing a good or service; (3) the specific seller the consumer is authorizing to make robocalls; and (4) the consumer’s telephone number and signature. 16 U.S.C. 310.4(b)(1)(v)(A)(i)-(iv).

23. 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).

24. Defendants are “sellers” or “telemarketers” engaged in “telemarketing” as those terms are defined in the TSR 16 C.F.R. 310.2(dd), (ff), and (gg).

### **COMMERCE**

25. 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.

### **RAMSEY’S, HERGHELEGIU’S, OFFNER’S AND THE COMMON ENTERPRISE CORPORATE DEFENDANTS’ VIOLATIONS**

26. Since on or about January 1, 2012, Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants initiated or caused the initiation of outbound telephone calls to consumers in the United States to induce the purchase of goods and services, including home security goods and services.

27. Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of home security goods and services by the use of one or more telephones and which involves more than one interstate telephone call.

28. Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants initiated or caused the initiation of live telemarketing calls to consumers to ascertain their interest in home security systems. Defendants obtained telephone numbers from public sources such as yellowpages.com and 411.com.

29. Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants also initiated or caused the initiation of prerecorded calls or robocalls to consumers using an automated dialing service or platform.

30. Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants used the following prerecorded message, among others:

“Hello. The FBI reports there is a home break-in every 15 seconds. Your local police recommend you protect your home. If you will allow us to place a small sign in your yard, we will install a new security system at absolutely no cost to you whatsoever. There is no cost for the system or the installation whatsoever. To hear more, press one now. To be placed on our do not call list, press nine.”

31. The prerecorded messages used by Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants directed consumers to press “1” if they were interested in getting a home security system. Consumers who pressed “1” were transferred to a telemarketer who worked for the Common Enterprise Corporate Defendants. The telemarketer asked if the consumer was a homeowner and interested in a home security system. If so, the consumer was either transferred to another telemarketer who worked for the Common Enterprise Corporate Defendants, transferred directly to the sellers of the systems, or told that the consumer would receive a follow-up call at a later time. For the consumers who received later follow-up calls, the Common Enterprise Corporate Defendants sent the consumers’ contact information to the sellers of the systems, who then contacted consumers.

32. The home security system sellers paid Defendants a fee for every sale of a home alarm system made to these consumers.



33. A significant percentage and number of the calls Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants initiated or caused to be initiated were to telephone numbers on the Registry. By calling telephone numbers on the Registry, Defendants invaded their privacy and violated the TSR.

34. Defendant Ramsey, in a conversation with Defendant Offner, admitted to intentionally calling people on the Registry.

35. Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants initiated or caused the initiation of millions of outbound telemarketing calls to telephone numbers listed on the Registry.

36. During just one week in July 2012, Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants initiated or caused the initiation of 1,331,395 robocalls delivering the previously quoted prerecorded message. Eighty Percent of those calls (1,064,559) were to telephone numbers that had been listed on the Registry for more than 30 days prior to the date of the call.

37. Defendants Ramsey, Herghelegiu, Offner and the Common Enterprise Corporate Defendants initiated or caused the initiation of millions of outbound telephone calls delivering a prerecorded message to induce the purchase of goods or services.

38. Defendant Ramsey materially participated in initiating or causing the initiation of robocalls to numbers on the Registry. For example, he set up the call center in Florida, managed the day-to-day operations of the call center, obtained leads of numbers to call, uploaded data onto a dialer, and initiated the calls using the dialer.

39. For many of the calls delivering prerecorded messages, Ramsey recorded the message himself, using his own voice. Ramsey also uploaded the audio file containing the prerecorded message to the automated dialing platform system.

**DEFENDANT RAMSEY'S CONTINUED VIOLATIONS THROUGH PRIME  
MARKETING OF CALLING CONSUMERS ON THE REGISTRY AND  
RAMSEY'S DISREGARD FOR THE LAW**

40. Since on or about January 1, 2014, Defendants Ramsey and Prime Marketing have engaged in telemarketing of home alarm systems, as well as other goods or services, including auto warranties, solar products, debt relief services, and vacation and travel packages.

41. Defendant Ramsey materially participates in the telemarketing. For example, he determines the number of call center agents to use in campaigns, the number of hours they will work, and which recording or script to use. He has also hired or retained one or more companies to place outbound telephone calls, and Ramsey provides those companies with lists of telephone numbers to dial. These telephone calls include prerecorded messages, and they include calls to telephone numbers listed on the Registry. Ramsey uses agents located outside the United States who respond to consumers' questions through selecting prerecorded answers or responses.

42. Through its owner, Defendant Ramsey, Prime Marketing initiates or causes the initiation of calls to consumers on the Registry.

43. Since on or about January 1, 2014, Ramsey and Prime Marketing have caused the initiation of calls to numbers on the Registry.

44. For example, during April and May of 2016, Ramsey and Prime Marketing initiated or caused the initiation of 3,546,892 telephone calls to sell home security systems, home solar energy equipment, or other goods and services. Nearly a quarter of those calls, 837,989, were to telephone numbers that had been listed on the Registry for more than 30 days.

45. Defendant Ramsey and Prime Marketing made the violative calls after Ramsey or one of his companies had been sued by Attorneys General in Indiana and Mississippi for violating state law by making calls to consumers on state do not call lists and using an automated dialing device that disseminated recorded voice messages. The Indiana Attorney General obtained a judgment on February 4, 2014 against Ramsey, which included both injunctive relief and a monetary judgment of \$4,375,000 based upon 274 law violations. The Mississippi Attorney General obtained a judgment against Tailbone Security on June 4, 2013, which included both injunctive relief and a monetary judgment of \$420,000 based upon 84 law violations. Ramsey admits that, when he received a document from the Mississippi Attorney General's Office, he threw it in the trash and did not read it.

46. Defendant Ramsey and Prime Marketing made violative calls even after Ramsey received, on or around January 15, 2014, a Federal Trade Commission CID issued to Data Guru for documents and responses to interrogatories. The CID stated that a purpose of the investigation was "to determine whether unnamed telemarketers, sellers or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45; and/or (2) deceptive or abusive practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310."

47. Ramsey made the violative calls even after he had received a CID for an Investigatory Hearing on October 31, 2014 and had been questioned under oath by FTC staff in a December 19, 2014, Investigatory Hearing. The Investigatory Hearing CID included the same statement as the earlier CID for documents and responses to interrogatories that the purpose of the investigation was "to determine whether there were (1) unfair or deceptive acts or practices

in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45; and/or (2) deceptive or abusive practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310."

48. Finally, in an email to a business associate on June 15, 2015, Defendant Ramsey showed his contempt about complying with the law as follows: "i [sic] HATE THE DNC ABSOLUTELY FU\*\*ING HATE IT."

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**Count I (Ramsey, Heghelegiu, Offner, and the Common Enterprise Corporate Defendants)  
Calls to Persons Registered on the National Do Not Call Registry**

49. In numerous instances, in connection with telemarketing, Defendants Ramsey, Herghelegiu, Offner, and the Common Enterprise Corporate Defendants have initiated or caused others to initiate an outbound telephone call to a telephone number on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

**Count II (Ramsey, Heghelgiou, Offner and the Common Enterprise Corporate Defendants)  
Initiating or Causing the Initiation of Unlawful Prerecorded Messages**

50. In numerous instances, in connection with telemarketing, Defendants Ramsey, Herghelegiu, Offner, and the Common Enterprise Corporate Defendants have initiated outbound telephone calls delivering a prerecorded message to induce the purchase of goods or services in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(v).

**Count III (Ramsey and Prime Marketing)  
Calls to Persons Registered on the National Do Not Call Registry**

51. In numerous instances, in connection with telemarketing, Defendants Ramsey and Prime Marketing have initiated or caused others to initiate an outbound telephone call to a telephone number on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

**CONSUMER INJURY**

52. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

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

53. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

54. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties. In 2012, the Court was authorized to award a penalty of not more than \$16,000 for each violation of the FDCPA. *See* 16 C.F.R. § 1.98(d) (2009). The maximum penalty amount was adjusted to \$40,000 per violation as of August 1, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 81 Fed. Reg. 42,476 (June 30, 2016).

55. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

56. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and pursuant to its own equitable powers:

- A. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;
- B. Award Plaintiff monetary civil penalties from each Defendant for every violation of the TSR;
- C. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants; 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.

Respectfully submitted,

David Shonka  
Acting General Counsel

s/Russell Deitch

Dated: January 10, 2017

---

Russell Deitch  
Ian Barlow (Special Bar No. A5502277)  
Attorneys  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
(202) 326-2585, 3120 (direct)  
(202) 326-3395 (facsimile)  
rdeitch@ftc.gov, ibarlow@ftc.gov

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION