

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

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, a limited liability company,
also d/b/a Point Break Media, Point Break Solutions, and
Kivanni Marketing,

DCP MARKETING, LLC, a limited liability company, also
d/b/a Point Break,

MODERN SPOTLIGHT LLC, a limited liability company,

MODERN SPOTLIGHT GROUP LLC, a limited liability
company, also d/b/a Modern Spotlight,

MODERN INTERNET MARKETING LLC, a limited
liability company,

MODERN SOURCE MEDIA, LLC, a limited liability
company, also d/b/a Modern Source,

PERFECT IMAGE ONLINE LLC, a limited liability
company,

ALLSTAR DATA, LLC, a limited liability company,

NATIONAL BUSINESS LISTINGS, LLC, a limited
liability company,

PINNACLE PRESENCE LLC, a limited liability company,

DUSTIN PILLONATO, individually and as an officer of
Pointbreak Media, LLC, DCP Marketing, LLC, and Modern
Source Media, LLC,

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

JUSTIN RAMSEY, individually and as an officer of Pointbreak Media, LLC, Modern Source Media, LLC, and Allstar Data, LLC,

AARON MICHAEL JONES, a/k/a Michael Aaron Jones and Mike Jones, individually and as an officer of Pointbreak Media, LLC,

RICARDO DIAZ, individually and as an officer of Pointbreak Media, LLC,

MICHAEL POCKER, individually and as an officer of Modern Spotlight LLC and Modern Spotlight Group LLC,

STEFFAN MOLINA, individually and as an officer of Modern Spotlight Group LLC, Perfect Image Online LLC, and Pinnacle Presence LLC,

VINCENT YATES, individually and as an officer of National Business Listings, LLC,

DANIEL CARVER, individually and as an officer of Perfect Image Online LLC and Pinnacle Presence LLC,

Defendants, and

STEPHANIE WATT,

JENNEFER RAMSEY,

Relief Defendants.

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 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, 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 Telemarketing Sales Rule ("TSR"), as amended, 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)(2-3), (d) 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 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), 56(a)(2)(A).

DEFENDANTS

6. Defendant Pointbreak Media, LLC ("Point Break"), also doing business as Point Break Media, Point Break Solutions, and Kivanni Marketing, is a Delaware limited liability

company with its principal place of business in Deerfield Beach, Florida. Point Break transacts or has transacted business in this district and throughout the United States.

7. Defendant DCP Marketing, LLC (“DCP Marketing”), also doing business as Point Break, is a Florida limited liability company with its principal place of business in Deerfield Beach, Florida. DCP Marketing transacts or has transacted business in this district and throughout the United States.

8. Defendant Modern Spotlight LLC (“Modern Spotlight”) is a Florida limited liability company with its principal place of business in Boca Raton, Florida. Modern Spotlight LLC transacts or has transacted business in this district and throughout the United States.

9. Defendant Modern Spotlight Group LLC (“Modern Spotlight Group”), also doing business as Modern Spotlight, is a Florida limited liability company with its principal place of business in Boca Raton, Florida. Modern Spotlight Group transacts or has transacted business in this district and throughout the United States.

10. Defendant Modern Source Media, LLC (“Modern Source”), also doing business as Modern Source, is a Florida limited liability company with its principal place of business in Deerfield Beach, Florida. Modern Source transacts or has transacted business in this district and throughout the United States.

11. Defendant Modern Internet Marketing LLC (“Modern Internet Marketing”) is a Florida limited liability company with its principal place of business in Deerfield Beach, Florida. Modern Internet Marketing transacts or has transacted business in this district and throughout the United States.

12. Defendant Perfect Image Online LLC (“Perfect Image Online”) is a Florida limited liability company with its principal place of business in Boca Raton, Florida. Perfect

Image Online transacts or has transacted business in this district and throughout the United States.

13. Defendant Allstar Data, LLC (“Allstar Data”) is a Delaware limited liability company with its principal place of business in Deerfield Beach, Florida. Allstar Data transacts or has transacted business in this district and throughout the United States.

14. Defendant National Business Listings, LLC (“National Business Listings”) is a Florida limited liability company with its principal place of business in Deerfield Beach, Florida. National Business Listings transacts or has transacted business in this district and throughout the United States.

15. Defendant Pinnacle Presence LLC (“Pinnacle Presence”) is a Florida limited liability company with its principal place of business in Boca Raton, Florida. Pinnacle Presence transacts or has transacted business in this district and throughout the United States.

16. Defendant Dustin Pillonato (“Pillonato”) is an owner and manager of Point Break, DCP Marketing, and Modern Source. At 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. Pillonato resides in Parkland, Florida and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

17. Defendant Justin Ramsey is an owner and manager of Point Break and Modern Source. At 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. Justin Ramsey resides in Boca Raton, Florida and, in

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

18. Defendant Aaron Michael Jones (“Jones”) is an owner and manager of Point Break. At 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. Jones resides in Irvine, California and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

19. Defendant Ricardo Diaz (“Diaz”) is an owner and manager of Point Break. Diaz also served as treasurer of Point Break. At 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. Diaz resides in Miramar, Florida and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

20. Defendant Michael Pocker (“Pocker”) is an owner and manager of Modern Spotlight and Modern Spotlight Group. At 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. Pocker resides in Boca Raton, Florida and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

21. Defendant Steffan Molina (“Molina”) is an owner and manager of Modern Spotlight Group and Perfect Image Online. 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. Molina resides in Boca Raton, Florida and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

22. Defendant Vincent Yates (“Yates”) is a manager of National Business Listings. 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. Yates resides in Delray Beach, Florida and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

23. Defendant Daniel Carver (“Carver”) is an owner and manager of Perfect Image Online and Pinnacle Presence. 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. Carver resides in Boca Raton, Florida and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

RELIEF DEFENDANTS

24. Relief Defendant Stephanie Watt is an individual who has received funds or assets from Defendants’ unlawful acts or practices alleged below, including from Defendants Pointbreak Media, LLC and DCP Marketing, LLC, and she has no legitimate claim to those funds. Stephanie Watt resides in this district.

25. Relief Defendant Jennefer Ramsey is an individual who has received funds or assets from Defendants’ unlawful acts or practices alleged below, including from Defendants Pointbreak Media, LLC and Allstar Data, LLC, and she has no legitimate claim to those funds. Jennefer Ramsey resides in this district.

COMMON ENTERPRISE

26. Defendants Pointbreak Media, LLC, DCP Marketing, LLC, Modern Spotlight LLC, Modern Spotlight Group LLC, Modern Internet Marketing LLC, Modern Source Media, LLC, Perfect Image Online LLC, Allstar Data, LLC, National Business Listings, LLC, and Pinnacle Presence LLC (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the acts and practices alleged below. As described in more detail in paragraphs 99-204, Corporate Defendants have conducted these acts and practices through a maze of interrelated companies under common or overlapping control, with common employees, in shared office space, and with commingled funds.

27. Because these Corporate Defendants have operated as a common enterprise, each is jointly and severally liable for the acts and practices alleged below. Defendants Pillonato, Justin Ramsey, Jones, Diaz, Pocker, Molina, Yates, and Carver (collectively, the “Individual Defendants”) 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. The Individual Defendants each had knowledge of the unlawful acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

28. At all times material to this Complaint, the 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

Overview

29. As described in more detail in paragraphs 35-95, Defendants operate a telemarketing scam in which they target small business owners with false threats of removal from Google's search engine and false promises of unique keywords in order to convince them to purchase a Google "claiming and verification" service. Defendants explain that keywords are search terms for which the consumer's business will appear prominently in search results. Defendants charge \$300-\$700 for the claiming and verification service.

30. Defendants also target each paying consumer with an upsell that falsely promises that the consumer's business will receive first-page placement in Google search results. Defendants charge a flat fee of \$949.99 and an additional monthly recurring charge of \$169.99 or \$99.99 for these search engine optimization services.

31. In late October 2017, when Defendants lost the ability to process credit card transactions, they wrote themselves \$100 checks from at least 250 consumers' bank accounts without those consumers' knowledge or authorization.

Google My Business

32. Defendants' initial sales pitch relates to Google's "Google My Business" service. Google My Business allows business owners to manage their business listings, including updating their business information (such as hours of operation and address), adding photographs, and responding to reviews.

33. A business owner gains control of his or her Google My Business listing by either claiming a preexisting listing or creating a new listing and then verifying that he or she is authorized to manage the business. The owner usually verifies his or her authority to manage the

business by providing a verification code that Google mails to the business address. Claiming the business takes no more than 15 minutes, and verifying it after receipt of the code takes no more than three minutes.

34. Google does not charge business owners for claiming and verifying their business listings, and the process does not involve identifying or claiming “keywords.” Claiming and verifying a business with Google does not guarantee first-page placement in search results.

Defendants Target Consumers With Threatening Robocalls

35. Since November 2016 at the latest, Defendants have placed threatening calls delivering prerecorded messages (“robocalls”) to small business owners and other consumers, in an effort to induce them to “press one” to speak to a live sales agent. Many consumers receive multiple robocalls daily from Defendants.

36. The recipients of Defendants’ robocalls have included individuals who have placed their phone numbers on the National Do Not Call Registry (“DNC Registry”).

37. On these robocalls, Defendants deliver recorded messages frequently claiming to be authorized by Google. The calls threaten that Google will label the consumer’s business “permanently closed” unless the consumer takes action. The robocalls then invite the consumer to “press one” to speak with a “Google specialist.”

38. One robocall, frequently used while Defendants operated as Point Break, states in full:

Hi, this is Jennifer Taylor, data service provider for Google and Bing. This is an urgent message for the business owner. We have tried numerous times to contact you through mail and now by telephone regarding your Google listing webpage. This is your final notice. If you do not act soon, Google will label your business as permanently closed. Press one now to speak with me or another Google specialist.

Did you know that 74 percent of your customers search online before making a purchase? If your Google listing is shut down, you will lose on all of those potential customers. It is critical that you, the business owner, take advantage of this rare opportunity to get ahead of your competition. Press one now to find out how to validate your free Google listing.

This message applies to all business owners. If you are the business owner, press one now. Press two if this is not a business or you would like to be removed from our calling list.

39. Another robocall, frequently used while Defendants operated as Modern Spotlight Group, states in full:

Your Google Business listing may be inactive. Immediate action is required.

Please press one to speak with a representative and avoid being removed from Google.

Please press eight to be removed from this list.

40. A third robocall, also used while Defendants operated as Point Break, states in full:

Hi, this is Jonathan Smith, third party service provider for Google and Bing. This is an urgent message for the business owner. We have tried numerous times to contact you by telephone regarding your Google listing webpage. Press one now to speak with me or another listing specialist.

Did you know that up to 74 percent of your customers could search online before making a purchase? It is critical that you, the business owner, take advantage of this rare opportunity to get ahead of your competition. Press one now to find out how to validate your listing.

This message applies to all business owners. If you are the business owner, press one now, or press two if this is not a business or you would like your number to be removed from the calling list. Thank you.

41. A fourth robocall, used while Defendants operated as National Business Listings, states in full:

Hey, this is Vincent with the Claims Center. Just giving you a call to let you know that it is imperative that you claim your Google listing. Otherwise, your business runs the risk of being removed from Google. Give me a call at your earliest convenience to resolve this matter at 855-900-1188. Thank you, talk to you soon.

42. These robocalls and others used by Defendants contain numerous false or misleading statements.

43. The Defendants are not “service providers” for Google and have no affiliation with or authorization from the company.

44. Additionally, the small businesses called by Defendants face no real risk of being removed from Google search results. Google does not label a business as permanently closed or “remove” it from search results simply because the business’s owner has not claimed and verified the business.

45. Moreover, Defendants place their robocalls to many business owners who have, in fact, already claimed and verified their businesses through Google My Business.

46. Although Defendants’ robocalls present a “press two” or “press eight” option to be removed from the Defendants’ calling list, Defendants do not remove consumers who press two or eight from their call lists. Defendants continue to call these consumers several times daily or weekly.

Defendants’ Sales Agents Use False Statements to Sell Google Listing Services

47. Defendants transfer consumers who press one in response to the robocalls to a live sales agent. The agent uses a script to lead these consumers through a sales pitch in which he or she claims that (1) Defendants are authorized by, or affiliated with, Google; (2) the consumer needs to pay Defendants to claim and verify the consumer’s business in order to avoid having the business removed from, or marked permanently closed by, Google; and (3) paying

Defendants will allow the consumer to link certain “keywords” to the consumer’s Google listing, resulting in prominent search result placement in response to searches for those keywords.

48. These claims are all false or misleading.

49. Defendants Justin Ramsey and Pillonato drafted the script used by Point Break’s sales agents. Modern Spotlight Group and Perfect Image Online continue to use a similar script that features the same three misrepresentations.

Defendants’ Claims of Google Authorization or Affiliation

50. On many calls, Defendants’ sales agents expressly tell consumers that they work for Google.

51. On other calls, Defendants’ sales agents admit to working for one of the Corporate Defendants rather than Google, but call their employer an “authorized Google My Business agency” or a contractor for Google.

52. For example, on one call recorded by a consumer, one of Defendants’ sales agents twice identified Defendant Modern Spotlight Group as “an authorized Google My Business agency,” later adding that Google had authorized Modern Spotlight Group to “claim and verify Google business listings.”

53. A different sales agent made the same representation on a call with an undercover FTC investigator, identifying Modern Spotlight Group as an “authorized Google – Google My Business agency.” The agent claimed that Google had “contract[ed] out” with Modern Spotlight Group. Later on the same call, a different sales agent identified himself as a “senior authorized Google My Business representative” and again identified Modern Spotlight Group as an “authorized Google My Business agency.”

54. On another call recorded by a consumer, one of Defendants' sales agents explained that Point Break is "like the umbrella under Google." On yet another call recorded by a different consumer, a sales agent from Point Break claimed, "We work directly parallel with Google. . . . Google Corporate . . . , they would reach out to like Walmart, Costco, Target, Starbucks, because they have multiple locations in just one distinctive area. That's why they have companies like us to reach out to small to medium size companies."

55. On another call, one of Defendants' sales agents, acting on behalf of National Business Listings, said, "[T]he name of our company is National Business Listings. . . . What we are is we're an authorized Google My Business representative for Google. The reason why Google will never give you a call, as you know, they have, they have billions of people on their search engine. It's nearly impossible for them to reach out to everybody. So there's four companies like us that are authorized to do so. And to be honest with you, . . . there's about 90 companies that do it altogether, but there's only four that are actually authorized to do so."

56. Even when Defendants' sales agents do not affirmatively claim that one of the Corporate Defendants is an "authorized Google My Business agency," they fail to correct the misrepresentation made on many of the immediately preceding robocalls that the caller is a "service provider for Google." Instead, for example, the script drafted by Justin Ramsey and Pillonato builds on the robocall's misrepresentation by directing the sales agents to start the call by declaring themselves "here to assist you with your Google listing" and stating that "our system" "shows your Google Listing (for name of company) has not been claimed or verified." The script directs Defendants' sales agents only to identify their employer if directly asked.

57. Defendants' claims described in paragraphs 50-56 are false.

58. Google has not authorized any of the Defendants to act on its behalf, and Google is in no way affiliated with any of the Defendants. Google has not contracted with Defendants to claim and verify Google listings. Google also does not approve, sponsor, or endorse the Defendants' services.

Defendants' Threats of Removal from Google

59. Defendants' sales agents usually start their sales calls by claiming that the consumer's Google business listing "has not been claimed or verified."

60. The sales agents proceed to state that because the consumer has not claimed and verified his or her business, the business "run[s] the risk of possibly being removed from the search engine or pushed so far down the search engine that no one will find you."

61. Defendants' sales agents then offer to help consumers avoid removal from Google by claiming and verifying the consumer's Google business listing on the consumer's behalf.

62. When consumers attempt to decline Defendants' services, the sales agents frequently return to threats of removal from Google. For example, when an undercover FTC investigator asked what would happen if she did not pay Defendant Point Break's fee, the agent replied, "Well, ma'am, then you are going to be running the risk of possibly being removed from Google. Google did give you a designated time slot to verify your business with them and you did not meet that." When the investigator nevertheless declined, the agent replied, "Have fun being removed from the Internet" and hung up.

63. On another undercover call with Defendant Modern Spotlight Group, an FTC undercover investigator confirmed, "[I]f I don't claim and verify, do I get removed from Google? Is that how this works?" The agent replied, "Yes." The agent then proceeded to claim that, "You actually have the basic listing It's a basic listing that Google gave to every business

five years ago. It's a simple name, address, and phone number listing. But right now, as the owner, it is your job to have the listing claimed and verified, marked as a trusted, open-for-business company because you guys are at risk of being removed because you're showing up improperly."

64. Similarly, the script drafted by Justin Ramsey and Pillonato for Point Break states, "Four years ago Google gave every business in the United States a Google Plus Page in hopes that businesses would claim and verify themselves."

65. Defendants' claims described in paragraphs 59-64 are false.

66. Google does not "remove" a business from the search engine simply because the business owner has not claimed and verified it.

67. In fact, unclaimed business listings often appear in Google search results.

68. Defendants also claim that consumers' businesses are not claimed and verified even when that statement is untrue.

69. Google did not give "every business" a "basic listing" or a "Google Plus Page" five years ago.

Defendants' Promises of Unique Keywords Linked to the Consumer's Business

70. After making their threats of removal from Google, Defendants' sales agents pivot to offering the consumer certain "keywords" as part of the claiming and verification process.

71. The Point Break script directs agents to explain that "[p]art of the claiming and verification process is registering your keywords, so you come up prominently when someone is searching for your goods and services."

72. Defendants' sales agents tell consumers that their businesses will appear on the first page of search results when potential customers search on Google for the keywords.

73. On some calls, Defendants' sales agents promise consumers that these keywords will be unique to the consumers' business, such that no other business can use them.

74. For example, on one call recorded by a consumer, Point Break's sales agent stated that the business owner would get "a list of keywords that nobody else can use in the world because they are your keywords." When the consumer sought to confirm that "nobody else can use the [keywords]," the agent responded, "Yes, sir, no one else can use them."

75. Similarly, an undercover FTC investigator asked, "[W]ith the service I guess the keywords are—are specifically for my business and no one else can use the keywords[?]" Point Break's sales agent confirmed that this was correct.

76. On another recorded call, a Modern Source Media sales agent told a consumer, "So as long as someone used your keyword your page will come up first."

77. Defendants' claims described in paragraphs 70-76 are false.

78. Defendants do not register or claim any keywords for consumers with Google, much less "unique" keywords.

79. In fact, Google does not provide the option to "register," or claim, "keywords" as part of the Google My Business claiming and verification process.

80. Consumers who have signed up for Defendants' services see no change in their search results, even when searching for the keywords that Defendants claim to have registered for them.

81. After this sales pitch, Defendants' sales agents tell consumers that there is a purported one-time fee for the claiming and verification "services" offered by Defendants. That

fee generally ranges from \$300-700. If consumers ask earlier in the call whether there will be a cost, the sales agent sometimes tells the consumer that he or she is not yet sure. Other times, the sales agent does not provide a specific cost, and instead claims that a computer will generate a fee that depends on the consumer's industry and location.

82. Consumers who sign up for Defendants' services provide either their credit card or checking account information to Defendants.

83. When a consumer provides checking account information, Defendants generate a remotely created check that draws on the consumer's account.

84. A remotely created check is processed through the banking system much like a traditional check, but without a consumer's signature, instead bearing a statement such as "Authorized by Account Holder." The check is created by the payee—here, one of the Corporate Defendants—rather than the individual or business on whose account the check is drawn.

85. After paying Corporate Defendants, some consumers receive a contract that Defendants' sales agents ask them to sign electronically. In the contract, Corporate Defendants promise to "build out the Google Maps link, a Google Plus page and a Google my Business listing" and to "use specific keywords and/or phrases set forth to impose the above business [sic] online visibility on Google." The contract does not set forth any keywords or phrases.

Defendants Upsell Consumers on a "Citation Program"

86. Shortly after making the initial payment, consumers receive an email or phone call from a "senior business analyst" working for one of the Corporate Defendants, typically either Point Break or Modern Source. The analyst claims he or she was assigned to the consumer's new Google listing and is calling to finalize the business listing.

87. On the follow-up call, rather than finalizing the business listing, the “senior business analyst” promotes a “Citation Program” that he or she claims will result in the consumer’s business being listed on fifty additional search engines.

88. Defendants tell consumers that this program will ensure prominent placement on Google. They usually tell consumers that their business will become the first search result or one of the first search results. Defendants sometimes tell consumers that the service has never failed a single customer. On one call, a Modern Source sales agent told an undercover FTC investigator, “I don’t care if you’re pizza or if you’re a plumber, I have seen this [program] work every single time.” He elaborated, “[W]e have a little over 4,500 clients in this secondary program, and it has worked for every one of them.”

89. The senior business analyst does not correct any of the misrepresentations made on the Defendants’ previous conversations with the consumer. The analyst, for example, does not correct the prior misrepresentation that the Defendants are authorized by, or affiliated with, Google.

90. The Citation Program costs a one-time fee of up to \$949.99 and recurring monthly payments typically equal to \$169.99 or \$99.99. Defendants tell consumers that the monthly payments are necessary because completing the work will take several months. There is no end date for the recurring charges.

91. Consumers pay for the Citation Program by providing their credit card or checking account information to Defendants. Then, Defendants either charge the credit card or generate a remotely created check that they deposit into one of their bank accounts.

92. Defendants send consumers who agree to this upsell a “Citation Services and Reporting Agreement” to sign electronically. The contract states that one of the Corporate

Defendants “is authorized to use the specific keywords and/or phases [sic] set forth below for development and improving the ranking in Citations and/or directories that are most frequently used by the general public which are defined below.” The contract, however, never sets forth any keywords or directories.

93. The contract also promises that the consumer’s “search results will be strong and constantly improve.”

94. Defendants’ claims are false or misleading. No third party, including Defendants, can guarantee that a business will appear on the first page of Google search results.

95. Consumers who sign up for the Citation Program see little or no improvement in their search results.

Defendants’ Unauthorized Consumer Billing

96. In late October 2017, Bank of America Merchant Services closed Point Break’s merchant account because of Point Break’s “predatory services, scare tactics and processing history with high chargeback ratios.” As a result, Point Break lost the ability to accept payments by credit card.

97. In response, Defendants simply took money, usually \$100, from at least 250 of their prior or existing customers’ checking accounts without those customers’ advance knowledge, consent, or authorization, and without any apparent reason or justification. Prior to this time, Defendants had not sold any services for which they regularly charged \$100.

98. Defendants took this money by generating remotely created checks written out to Point Break Media, often with “Google/Apple/Bing” in the memo line. Defendant Justin Ramsey endorsed each check before depositing it into one of two different Point Break checking accounts at two different banks.

DEFENDANTS' COMMON ENTERPRISE AND
SHIFTING CORPORATE IDENTITIES

99. Since November 2016, Defendants have operated their common enterprise through a series of business aliases and limited liability companies. These entities have all performed functions related to the unfair and deceptive practices outlined above. They have shared owners, managers, office space, and employees, and have commingled funds.

Pointbreak Media, LLC

100. Pointbreak Media, LLC formed in Delaware in May 2016.

101. Point Break filed in July 2017 for authorization to transact business in Florida. The filing identified Point Break's principal office and mailing address as 951 Broken Sound Parkway, Suite 188, Boca Raton, FL 33487.

102. Point Break's July 2017 filing identified Defendants Pillonato, Justin Ramsey, Jones, and Diaz as "Managing Members" of Point Break. The filing also identified Diaz as Point Break's Treasurer and registered agent.

103. Justin Ramsey swore to the accuracy of the July 2017 filing, and Diaz also signed the filing as Point Break's registered agent.

104. Point Break employed Defendant Yates as a sales agent. In that role, Yates made the false claims described in paragraphs 35-95 above.

105. From November 2016 until December 2017, Point Break engaged in the unlawful acts and practices described in paragraphs 29-98 above. Specifically, Point Break used deceptive claims to sell Google "claiming and verification" services to consumers, upsold those victims on the Citation Program service by using additional deceptive claims, and then, in October 2017, took \$100 from over 250 consumers without authorization.

106. From November 2016 until March 2017, Point Break did business as “Kivanni Marketing.”

107. Since March 2017, Point Break has done business as Point Break Media and Point Break Solutions.

108. Justin Ramsey opened at least three merchant bank accounts for Point Break, through which Point Break processed credit card transactions. Two of the merchant accounts operated under the “Kivanni Marketing” name, while a third operated as “Pointbreak Media, LLC.”

109. Defendants have held money obtained from consumers in at least two checking accounts and one savings account. Justin Ramsey and Pillonato are signatories on both checking accounts. Justin Ramsey is a signatory on the savings account.

110. In March 2017, Pillonato, acting on behalf of Point Break, signed a “cloud contact center” Master Services Agreement with a telecommunications company from which Pillonato obtained toll-free numbers that both Point Break and Modern Source provided to consumers.

111. Defendant Point Break sent or received money, either directly or indirectly, to and from Defendants Justin Ramsey, Pillonato, Jones, Diaz, Yates, DCP Marketing, Modern Spotlight, Modern Spotlight Group, and Modern Internet Marketing, and Relief Defendants Stephanie Watt and Jennefer Ramsey.

112. For most of 2017, Point Break paid the rent at the Defendants’ 951 Broken Sound Parkway, Suite 188, Boca Raton, FL 33487 address. Diaz signed a lease for use of that office space on behalf of non-party ConsultMe, LLC.

113. Throughout Point Break's existence, but especially in late 2017, it faced mounting obstacles, primarily in the form of increased public awareness of its scam and increased scrutiny from banks and credit card processors.

114. In July 2017, for example, a private plaintiff sued Point Break, Justin Ramsey, and Pillonato for violations of the Telephone Consumer Protection Act. Within a few weeks, the plaintiff voluntarily dismissed the case after reaching a settlement agreement with Defendants.

115. Two months later, in September 2017, a different plaintiff filed a new Telephone Consumer Protection Act complaint. In early November 2017, the plaintiff voluntarily dismissed the case.

116. Throughout this time period, consumers repeatedly made complaints about Point Break, both to the FTC and on public internet forums. Point Break's own Google business listing, for example, was littered with reviews from angry consumers.

117. In October 2017, a reporter from Boston's local Fox affiliate showed up unannounced at Point Break's call center to confront Justin Ramsey. Ramsey declared that he was "follow[ing] all the rules," but admitted that he was doing "Google listings" work. Shortly thereafter, the Fox affiliate aired, and posted to its website, a story highlighting Ramsey and Point Break's robocall operation.

118. At around the same time, on October 20, 2017, a representative from Bank of America Merchant Services contacted Justin Ramsey to inform him that the bank had decided to close the account that Point Break used to process credit card transactions. The bank's internal notes blame the closure on "the merchant's predatory services, scare tactics and processing history with high chargeback ratios." In the first twenty days of the month, Point Break had processed over \$125,000 in credit card charges.

119. Justin Ramsey attempted to export his Point Break customer list from Bank of America Merchant Services on or around October 23, 2017. Ramsey also sought to transfer all of Point Break's recurring charges to another payment gateway.

120. Having lost the ability to receive credit card payments and apparently in need of cash, Point Break simply started writing checks to itself out of consumers' bank accounts, taking over \$25,000 in just five days. Justin Ramsey endorsed all of these checks.

121. At around the same time, on October 21, 2017, Justin Ramsey opened a new Point Break checking account, the company's first account at Wells Fargo Bank. On October 25, 2017, Ramsey added Pillonato as a signatory to that account, identifying him as a "part owner" of Point Break.

122. Defendants split their deposits of the unauthorized checks between their existing Bank of America and new Wells Fargo checking accounts between October 24, 2017 and October 26, 2017.

123. Once it had reestablished itself at Wells Fargo, Point Break continued operations, but told consumers that they could only pay by providing bank account information rather than by credit card.

124. By early December 2017, Point Break had stopped making new sales. In January 2018, it withdrew its authorization to conduct business in Florida. Since January 2018, Point Break has continued to answer calls from consumers who previously had signed up for its services.

DCP Marketing, LLC

125. Pillonato formed DCP Marketing, LLC in Florida in March 2016.

126. Pillonato is the registered agent and sole manager for DCP Marketing.

127. Pillonato is the sole signatory on at least two of DCP Marketing's checking accounts.

128. In late August and early September 2017, as pressure mounted on Point Break, DCP Marketing received over \$61,000 from Point Break and funneled the money through Defendant Modern Internet Marketing and Defendant Molina to Defendant Modern Spotlight.

129. Specifically, between August 25 and August 31, 2017, Point Break wired over \$71,000 to DCP Marketing. Between August 25 and September 15, DCP Marketing then transferred over \$61,000 of that \$71,000 to Modern Internet Marketing. Modern Internet Marketing, in turn, transferred the money received from DCP Marketing to Modern Spotlight, either directly or through Molina.

130. These transactions occurred at around the same time that Pocker and Molina formed and began operating Modern Spotlight Group.

131. Additionally, on November 13, 2017, just weeks after Point Break lost the ability to charge consumers' credit cards, DCP Marketing established a merchant account, doing business as "Point Break."

132. DCP Marketing used this account to continue Point Break's recurring charges—of either \$169.99 or \$99.99 per month—of consumers who had enrolled in the Citation Program.

133. At around the same time, DCP Marketing started to deposit into its own account remotely created checks written to Point Break Media. Justin Ramsey endorsed these checks.

134. In November 2017, DCP Marketing also paid the monthly rent at the Defendants' 951 Broken Sound Parkway, Suite 188 address, despite the lease remaining in the name of Defendant Diaz's ConsultMe, LLC.

135. Additionally, in early December 2017, when Point Break stopped paying employees, DCP Marketing started paying some of those employees. Modern Spotlight Group began paying others on November 22, 2017.

136. DCP Marketing sent or received money, either directly or indirectly, to and from Defendants Pillonato, Molina, Yates, Point Break, Modern Spotlight, Modern Spotlight Group, Modern Internet Marketing, Modern Source Media, Perfect Image Online, and Allstar Data, and Relief Defendant Stephanie Watt.

Modern Spotlight LLC and Modern Spotlight Group LLC

137. Defendant Pocker and non-party Paul DeCamara formed Defendant Modern Spotlight LLC in Florida on March 6, 2017.

138. Pocker is a manager of Modern Spotlight and its registered agent.

139. Pocker is a signatory on at least two Modern Spotlight checking accounts.

140. Modern Spotlight LLC employed Defendant Carver as its sales manager.

141. Between March and August 2017, Modern Spotlight sold Google “claiming and verification” services to consumers using the false claims described in paragraphs 35-85 above.

142. On March 14, 2017, Pocker, on behalf of Modern Spotlight, signed a lease to rent 550 Fairway Drive, Suite 104, Deerfield Beach, FL 33441. Both Modern Spotlight and Modern Spotlight Group have made rent payments pursuant to this lease agreement.

143. In early July 2017, Modern Spotlight LLC’s merchant account was closed. It therefore lost the ability to process credit card transactions. After the account closure, Modern Spotlight LLC reached an agreement with Point Break to use Point Break’s not-yet-terminated merchant account to process Modern Spotlight LLC’s credit card sales. In exchange, Point Break received 30% of the revenues from those sales.

144. As described in paragraphs 128-129 above, beginning in late August, Modern Spotlight received over \$61,000 from Point Break, via Defendants DCP Marketing, Molina, and Modern Internet Marketing.

145. On August 30, 2017, Pocker and Molina formed Modern Spotlight Group LLC in Florida. Pocker and Molina opened two Modern Spotlight Group checking accounts on September 13, 2017.

146. Pocker is Modern Spotlight Group's registered agent, and Pocker and Molina are Modern Spotlight Group's sole managers.

147. Modern Spotlight Group employed Defendant Carver as its sales manager.

148. Modern Spotlight Group has at least two checking accounts, for which Pocker and Molina are also the sole signatories.

149. Modern Spotlight Group incorporated at 550 Fairway Drive, Suite 104, Deerfield Beach, FL 33441 and lists this address on its website.

150. Modern Spotlight Group also has or had a call center at 951 Broken Sound Parkway, Suite 188, Boca Raton, FL 33487. Point Break and DCP Marketing have paid rent at this address.

151. Modern Spotlight Group and Modern Spotlight LLC have participated in the deceptive acts and practices described above by using claims of affiliation with Google, threats of removal from Google, and promises of unique keywords to sell Google "claiming and verification" services to small business owners, as described in paragraphs 35-85.

152. In late September 2017, Modern Spotlight Group started to pay most of the employees whom, until the week prior, had been paid by Modern Spotlight.

153. In mid-November 2017, Modern Spotlight Group also started to pay most of the employees whom, until the week prior, had been paid by Point Break.

154. Consumers who purchased Google listing services from Modern Spotlight Group or Point Break received virtually identical welcome emails.

155. Modern Spotlight Group uses or used a “Google Business Listing Agreement” that is substantially similar to the “Google listing Agreement” that Point Break used.

156. On one call with an undercover FTC investigator, a Modern Spotlight Group sales agent confirmed the connection between Point Break and Modern Spotlight Group. When asked whether Point Break and Modern Spotlight Group were the same, the agent stated, “So our company, we’re—we’re a new—we merged companies. So that company was not the greatest. So my company bought out—the company that I work for now bought the other company out.”

157. Modern Spotlight and Modern Spotlight Group have sent or received money, either directly or indirectly, to and from each other and Defendants Pocker, Molina, Carver, Point Break, DCP Marketing, Modern Internet Marketing, Modern Source Media, and Perfect Image Online.

158. Modern Spotlight Group and Modern Spotlight LLC each voluntarily dissolved on February 7, 2018.

159. At around the same time that Modern Spotlight Group and Modern Spotlight voluntarily dissolved, Modern Spotlight Group representatives emailed the company’s existing customers to introduce themselves as “the representative assigned to your google listing.”

160. On February 23, 2018, an FTC undercover investigator called the phone number provided in Modern Spotlight Group’s email. The representative who had sent the email told the investigator that Modern Spotlight Group had “relocated offices three weeks ago.” When the

investigator asked for Modern Spotlight Group's new address, the representative answered that it was 4730 NW 2nd Avenue, Suite 200, Boca Raton, Florida. Perfect Image Online also uses this office space.

161. When the investigator asked if "everything else was still the same," the representative stated, "Everything else is still the same. We just relocated offices."

Modern Source Media, LLC

162. Pillonato formed Defendant Modern Source in Florida on November 13, 2017.

163. Pillonato is the registered agent of Modern Source.

164. Pillonato and Justin Ramsey are managers of Modern Source.

165. Pillonato is a signatory on at least one Modern Source checking account. DCP Marketing made the initial deposit into this account.

166. Modern Source incorporated at 550 Fairway Drive, Suite 104, Deerfield Beach, FL 33441 and lists this address on its website.

167. Pillonato also opened a merchant account on behalf of Modern Source, through which it has charged consumers' credit cards. That merchant account also uses the 550 Fairway Drive address.

168. Since November 2017, Modern Source has engaged in the acts and practices described in paragraphs 86-95 above. Specifically, Modern Source has built on Modern Spotlight Group's deceptive acts and practices by deceptively upselling Modern Spotlight Group's victims on the Citation Program.

169. After telling an FTC undercover investigator that his company "just recently went to [sic] a change," a Modern Source sales agent informed the investigator that Modern Source and Modern Spotlight were "sister compan[ies]."

170. That same sales agent also said that he had “been with these guys for almost two years now,” despite the fact that Modern Source had formed less than two months prior to the conversation. The agent later added that “the old name, it was Pointbreak is what they were going by” and then confirmed that “it went from Pointbreak to Modern Spotlight.”

171. Over two weeks prior to Modern Source’s formation, Point Break obtained a toll-free number that Modern Source now lists on its website.

172. For consumers who agree to the upsell, Modern Source uses virtually the same Citation Services and Reporting Agreement as Point Break.

173. Modern Source has sent or received money, either directly or indirectly, to and from Defendants Pillonato, Yates, DCP Marketing, Modern Spotlight Group, Allstar Data, and National Business Listings.

Perfect Image Online LLC

174. Defendant Molina formed Perfect Image Online LLC in Florida on December 29, 2017.

175. Molina is an owner, registered agent, and manager of Perfect Image Online.

176. Molina is the sole signatory on at least one Perfect Image Online checking account.

177. Carver is an owner of, and sales manager for, Perfect Image Online.

178. Perfect Image Online shares with Modern Spotlight Group the office space at 4730 NW 2nd Avenue, Suite 200, Boca Raton, FL 33431.

179. Since February 2018, Perfect Image Online has participated in the deceptive acts and practices described in paragraphs 35-85 above, by using claims of affiliation with Google,

threats of removal from Google, and promises of unique keywords to sell Google “claiming and verification” services to small business owners.

Modern Internet Marketing LLC

180. Non-party Sean Pocker, the brother of Defendant Michael Pocker, formed Defendant Modern Internet Marketing in Florida in July 2017.

181. Modern Internet Marketing is located at 550 Fairway Drive, Suite 104, Deerfield Beach, FL 33441.

182. As described in paragraphs 128-129 above, beginning in late August, Modern Internet Marketing facilitated the transfer of over \$61,000 from Defendant Point Break to Defendant Modern Spotlight.

183. Modern Internet Marketing also has transferred almost all of the other money it has received directly to Modern Spotlight.

184. Modern Internet Marketing has sent or received money, either directly or indirectly, to and from Defendants Molina, Point Break, DCP Marketing, and Modern Spotlight.

Allstar Data, LLC

185. Defendant Justin Ramsey formed Allstar Data, LLC in Delaware in May 2016.

186. Justin Ramsey is the sole owner, manager, and officer of Allstar Data. Allstar Data has no employees.

187. Justin Ramsey is the sole signatory on at least three Allstar Data bank accounts.

188. Justin Ramsey directed that his ownership distributions from Point Break be sent to Allstar Data.

189. In May 2018, Modern Spotlight LLC assigned the lease for the office space at 550 Fairway Drive, Suite 104, Deerfield Beach, FL 33441 to Allstar Data. Justin Ramsey accepted

assignment of the lease on behalf of Allstar Data. Defendants Point Break, Modern Spotlight LLC, Modern Spotlight Group, Modern Source, DCP Marketing, and National Business Listings have operated from this office space.

190. Allstar Data, on at least one occasion, sent money to Modern Source, which Modern Source then used to pay Defendants' employees.

191. Allstar Data has sent or received money, either directly or indirectly, to and from Defendants Justin Ramsey, Yates, Point Break, DCP Marketing, and Modern Source, and Relief Defendant Jennefer Ramsey.

National Business Listings, LLC

192. Defendant Yates formed National Business Listings, LLC in Florida on February 19, 2018.

193. Yates is the registered agent and a manager of National Business Listings.

194. Yates is the sole signatory on at least one National Business Listings checking account.

195. National Business Listings shares with Modern Source the office space at 550 Fairway Drive, Suite 104, Deerfield Beach, FL 33441.

196. Since February 2017, National Business Listings has participated in the deceptive acts and practices described in paragraphs 35-85 above, by using claims of affiliation with Google, threats of removal from Google, and promises of unique keywords to sell Google "claiming and verification" services to small business owners.

197. National Business Listings has sent or received money, either directly or indirectly, to and from Defendants Yates, DCP Marketing, Allstar Data, and Modern Source.

Pinnacle Presence LLC

198. Pinnacle Presence LLC is a Florida limited liability company formed on April 9, 2018.

199. Defendants Molina and Carver are owners of Pinnacle Presence LLC.

200. Molina controls the marketing and sales practices of Pinnacle Presence.

201. Carver is the sales manager for Pinnacle Presence.

202. Pinnacle Presence's operations are identical to those of Perfect Image.

203. Pinnacle Presence shares with Modern Spotlight Group and Perfect Image Online the office space at 4730 NW 2nd Avenue, Suite 200, Boca Raton, FL 33431.

204. Since April 2018, Pinnacle Presence has participated in the deceptive acts and practices described in paragraphs 35-85 above, by using claims of affiliation with Google, threats of removal from Google, and promises of unique keywords to sell Google "claiming and verification" services to small business owners.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

207. Acts or practices are unfair under Section 5 of the FTC Act if they cause, or are likely to cause, substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I – Deceptive Representations

208. In numerous instances, in the course of marketing, offering for sale, and selling Google listing or search engine optimization services, Defendants represent or have represented, expressly or by implication, that:

- A. Defendants are authorized by, or affiliated with, Google.
- B. Consumers' businesses are in imminent danger of being marked permanently closed by Google or removed from Google's search results because consumers have not "claimed and verified" those businesses with Google.
- C. Defendants, as part of claiming and verifying the consumers' businesses, can assign certain keywords to those businesses that will result in the prominent display of the businesses' websites or listings.
- D. Defendants can guarantee prominent, first-page, or first-place placement in Google search results to consumers who pay for the Defendants' Citation Program.

209. In truth and in fact:

- A. Defendants are not authorized by, or affiliated with, Google.
- B. Consumers' businesses are not in imminent danger of being marked permanently closed by Google or removed from Google's search results.
- C. Defendants cannot, as part of claiming and verifying consumers' businesses, assign to those businesses certain keywords that will result in the prominent display of the businesses' websites or listings.

D. Defendants cannot guarantee prominent, first-page, or first-place placement in Google search results to consumers who pay for the Defendants' Citation Program.

210. Therefore, Defendants' representations as set forth in Paragraph 208 are false, misleading, or were not substantiated at the time they were made, and thus, they constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II – Unfair Billing Practices

211. As described in Paragraphs 96-98, in numerous instances, Defendants have obtained consumers' bank account information and caused billing information to be submitted for payment on those accounts without consumers' authorization.

212. Defendants' actions caused substantial injury to consumers that consumers could not reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

213. Therefore, Defendants' practices described in Paragraph 211 of this Complaint constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE TELEMARKETING SALES RULE

214. 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, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain sections thereafter. 16 C.F.R. Part 310.

215. Among other things, the 2003 amendments to the TSR established the DNC Registry, maintained by the Commission, 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.

216. 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, or by otherwise contacting law enforcement authorities.

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

218. 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. 16 C.F.R. § 301.2(dd).

219. 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).

220. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call that delivers a prerecorded message. 16 C.F.R. § 310.4(b)(1)(v).

221. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B)(1).

222. 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).

223. 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).

COUNT III – Initiating or Causing the Initiation of Unlawful Prerecorded Messages

224. As described in Paragraphs 35-46, in numerous instances in connection with telemarketing, Defendants have initiated or caused others to initiate outbound telephone calls delivering a prerecorded message to induce the purchase of goods or services.

225. Therefore, Defendants’ practices described in Paragraph 224 of this Complaint constitute a violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v).

COUNT IV – Calls to Persons Registered on the National Do Not Call Registry

226. As described in Paragraphs 35-46, in numerous instances in connection with telemarketing, Defendants have initiated or caused others to initiate outbound telephone calls to a telephone number on the DNC Registry.

227. Therefore, Defendants’ practices described in Paragraph 226 of this Complaint constitute a violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT V – Relief Defendants

228. Relief Defendants Stephanie Watt and Jennefer Ramsey have received, directly or indirectly, funds or other assets obtained from Defendants’ customers through the unlawful acts or practices described herein.

229. Relief Defendants are not bona fide purchasers with legal and equitable title to Defendants’ customers’ funds or other assets, and Relief Defendants will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of Defendants’ unlawful acts or practices.

230. By reason of the foregoing, Relief Defendants hold funds and assets in constructive trust for the benefit of Defendants' customers.

CONSUMER INJURY

231. 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

232. 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, including the TSR. 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.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(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, and an order providing for immediate access, the turnover of business

records, an asset freeze, the appointment of a receiver, and the disruption of domain and telephone services;

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;

D. Enter an order requiring Relief Defendants to disgorge all funds and assets, or the value of the benefit they received from the funds and assets, which are traceable to Defendants' unlawful acts or practices; and

E. Award Plaintiff FTC 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,

ALDEN F. ABBOTT
General Counsel

Dated: July 3, 2018

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