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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

POSITION GURUS, LLC, a Washington limited liability corporation; TOP SHELF ECOMMERCE, LLC, a Washington limited liability corporation; AARON POYSKY, individually and as an owner of POSITION GURUS, LLC, and TOP SHELF ECOMMERCE, LLC; STACY GRIEGO, individually and as an owner of POSITION GURUS, LLC, and TOP SHELF ECOMMERCE, LLC; and SAMUEL COHEN BROWN, individually and as an owner of POSITION GURUS, LLC, and TOP SHELF ECOMMERCE, LLC,

Defendants.

Case No. 2:20-cv-710

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101– 6108, and the Consumer

1 Review Fairness Act of 2016 (“CRFA”), 15 U.S.C. § 45b, to obtain injunctive relief, rescission
2 or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten
3 monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a)
4 of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310,
5 and the CRFA, 15 U.S.C. § 45b.

6 **JURISDICTION AND VENUE**

7 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and
8 1345.

9 3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (b)(3), (c), and (d),
10 and 15 U.S.C. § 53(b).

11 **SUMMARY OF THE CASE**

12 4. Since 2015, Defendants have run a deceptive telemarketing operation selling Internet
13 marketing products and services to consumers trying to start a home-based Internet business.
14 Defendants induce consumers to pay thousands of dollars by falsely promising, among other
15 things, that their products and services will enable consumers’ home-based Internet businesses
16 to succeed and be profitable. Contrary to Defendants’ representations, many consumers who
17 purchase Defendants’ products and services do not end up with a functional website, earn little
18 or no money, and end up heavily in debt.

19 5. Through this scheme, Defendants have violated the FTC Act, the Telemarketing Sales
20 Rule, and the CRFA by, among other things: (1) making unsubstantiated and false earnings and
21 product claims; (2) making false claims about their business affiliations and need for
22 consumers’ personal financial information; and (3) using form contract provisions that restrict
23 individual consumers’ ability to review or complain about Defendants’ products, services, or
24 conduct. The FTC seeks equitable relief to put a stop to this scheme and hold Defendants liable
25 for millions of dollars of consumer harm they have caused.

26 **PLAINTIFF**

27 6. The FTC is an independent agency of the United States Government created by statute.
28 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 or abusive

1 telemarketing acts or practices. Additionally, the FTC enforces the CRFA, 15 U.S.C. § 45b,
2 which prohibits the offering of provisions in form contracts that restrict individual consumers'
3 ability to communicate reviews, performance assessments, and similar analyses about a seller's
4 products, services, or conduct.

5 7. The FTC is authorized to initiate federal district court proceedings, by its own attorneys,
6 to enjoin violations of the FTC Act, the TSR, and the CRFA to secure such equitable relief as
7 may be appropriate in each case, including rescission or reformation of contracts, restitution, the
8 refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 45b(d)(2)(A),
9 53(b), 56(a)(2)(A)–(B), 57b, and 6102(c).

10 **DEFENDANTS**

11 8. Defendant POSITION GURUS, LLC (“Position Gurus”), is a Washington limited
12 liability corporation with its principal place of business at 833 Industry Drive, Tukwila,
13 Washington 98188. Defendant Position Gurus transacts or has transacted business in this
14 District and throughout the United States. Since at least 2015, acting alone or in concert with
15 others, Defendant Position Gurus has advertised, marketed, distributed, or sold Internet business
16 marketing products and services to consumers throughout the United States.

17 9. Defendant TOP SHELF ECOMMERCE, LLC (“Top Shelf”), was a Washington limited
18 liability corporation with its principal place of business at 833 Industry Drive, Tukwila,
19 Washington 98188, that was dissolved administratively on September 3, 2018. Defendant Top
20 Shelf transacts or has transacted business in this district and throughout the United States. Since
21 at least 2015 until approximately March 2017, Defendant Top Shelf, acting alone or in concert
22 with others, has advertised, marketed, distributed, or sold Internet marketing business products
23 and services to consumers throughout the United States.

24 10. Defendant AARON POYSKY, was an owner of Defendant Top Shelf and is an owner
25 and manager of Defendant Position Gurus. Defendant Aaron Poysky was responsible for the
26 management and daily operations of Top Shelf and is responsible for management of the daily
27 operations of Position Gurus. He is a signatory for Defendants Position Gurus' and Top Shelf's
28 merchant and bank accounts. At all times material to this Complaint, acting alone or in concert
with others, he has formulated, directed, controlled, had the authority to control, or participated
in the acts and practices set forth in this Complaint. Defendant Aaron Poysky resides in this

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

3 11. Defendant STACY GRIEGO was an owner of Top Shelf and is a de facto owner and
4 manager of Defendant Position Gurus. Defendant Stacy Griego manages the telemarketing
5 sales room of Defendant Position Gurus and manages daily activities for the company. He
6 performed the same activities for Defendant Top Shelf. He is also a signatory on merchant and
7 bank accounts used by Defendant Top Shelf. At all times material to this Complaint, acting
8 alone or in concert with others, he has formulated, directed, controlled, had the authority to
9 control, or participated in the acts and practices set forth in this Complaint. Defendant Stacy
10 Griego resides in this District and, in connection with the matters alleged herein, transacts or
11 has transacted business in this District and throughout the United States.

12 12. Defendant SAMUEL COHEN BROWN was an owner of Defendant Top Shelf and was a
13 de facto owner and manager of Defendant Position Gurus. Defendant Samuel Cohen Brown
14 managed the daily operations of the companies, including, but not limited to, managing product
15 and service fulfillment. He also was a signatory on merchant and bank accounts used by
16 Defendant Top Shelf. Since at least 2015 and until approximately March 2017, acting alone or
17 in concert with others, he formulated, directed, controlled, had the authority to control, or
18 participated in the acts and practices set forth in this Complaint. Defendant Samuel Cohen
19 Brown resides in this District and, in connection with the matters alleged herein, transacts or has
20 transacted business in this District and throughout the United States.

21 COMMON ENTERPRISE

22 13. Defendants Position Gurus and Top Shelf (collectively, “Corporate Defendants”) have
23 operated as a common enterprise while engaging in the unlawful acts and practices alleged
24 below. Corporate Defendants have conducted the business practices described below through
25 interrelated companies that have common ownership, officers, managers, business functions,
26 employees, and office locations, and that sell the same products or services, use identical
27 contracts, maintain a shared customer database, and commingle funds. Because these Corporate
28 Defendants have operated as a common enterprise, each of them is jointly and severally liable
for the acts and practices alleged below. Defendants Aaron Poysky, Stacy Griego, and Samuel
Cohen Brown (collectively, “Individual Defendants”) have formulated, directed, controlled, had

1 the authority to control, or participated in the acts and practices of Corporate Defendants that
2 constitute the common enterprise.

3 **COMMERCE**

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

7 **DEFENDANTS’ BUSINESS ACTIVITIES**

8 15. Since at least 2015 to approximately March 2017, Defendant Top Shelf sold marketing-
9 related products and services to consumers trying to start a home-based Internet business. In or
10 around March 2017, Defendant Top Shelf ceased sales to new customers.

11 16. Since at least 2015 and continuing thereafter, Defendant Position Gurus sold primarily
12 the same marketing-related products and services as Defendant Top Shelf to consumers trying
13 to start a home-based Internet business. After Defendant Top Shelf ceased making new sales in
14 2017, Defendant Position Gurus continued making new sales and provided products and
15 services to Defendant Top Shelf’s existing customers.

16 17. Defendants are or have engaged in telemarketing through a plan, program, or campaign
17 involving one or more telephones and more than one interstate call. They are using or have
18 used a variety of deceptive tactics described herein to induce consumers to purchase products
19 and services purportedly designed to help them build and market a home-based business on the
20 Internet.

21 18. Typically, Defendants sell consumers marketing products and services that they claim
22 will substantially increase the visibility of and drive customer traffic to consumers’ ecommerce
23 websites on the Internet. These products and services include, but are not limited to, website
24 building, directory submissions, Quick Response codes, social media page design, video
25 development, video social submissions, infographics, press releases, and article marketing.
26 Defendants typically charge consumers an upfront fee of several thousand dollars for their
27 various products and services.

28 19. Defendants rely on consumer leads to market their products and services to consumers.
Those potential customers often have already purchased a purported business opportunity, or a
related product or service, from another telemarketing operation that, in turn, sold its customers’
information as leads to Defendants. The FTC has sued some of these other telemarketing

1 operations for similarly deceptive telemarketing practices. *See FTC v. Lift International, LLC*,
2 Case No. 2:17-cv-00506-RJS (D. Utah filed June 5, 2017), and *FTC v. Vision Solution*
3 *Marketing, LLC*, Case No. 2:18-cv-00356-CW (D. Utah filed May 1, 2018).

4 20. Defendants also obtain leads by using a service that searches for, extracts, and copies data
5 from newly registered websites. This process, called “web scraping,” enables Defendants to
6 produce leads of consumers who have recently registered websites. Many of these websites are
7 registered to consumers who are trying to develop a new online business on Internet platforms
8 such as Shopify and Volusian.

9 21. Defendants’ telemarketing staff contact consumers identified as leads by telephone to sell
10 Defendants’ products and services. In many instances, after completing an initial sale,
11 Defendants’ telemarketing sales staff continue to contact the same consumers again to “upsell”
12 additional products and services that they claim consumers need for their websites to succeed
13 and be profitable.

14 22. The sales calls typically last for more than an hour over the course of one or more
15 telemarketing calls. Defendants’ telemarketing staff use high-pressure sales tactics and a
16 number of misrepresentations, as outlined below, to generate sales.

17 23. Consumers who agree to purchase Defendants’ products and services are provided with
18 an electronic “service agreement” at the end of the call and asked to provide an electronic
19 signature. The service agreements are virtually the same for Top Shelf and Position Gurus.

20 24. In numerous instances, when discussing the service agreements, Defendants’
21 telemarketers only emphasize the products and services itemized for purchase. They do not
22 highlight or bring consumers’ attention to the disclaimers that contradict or qualify what
23 consumers are told over the phone.

24 25. Defendants typically remit a portion of the revenue generated from each lead that they
25 obtain from other telemarketing operations. This portion is typically 25-40% of the revenue
26 generated, which Defendants give back to the lead source as payment for the lead. Defendants
27 also sell leads that they generated to other telemarketing operations and earn typically 25-40% of
28 the sales that other telemarketing operations make on their leads.

26. Defendants’ telemarketing staff typically are paid state minimum wage or approximately
15% of the revenue they generate from sales, whichever is greater.

Misrepresentations About Affiliation

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2 27. When Defendants’ lead data is purchased from another telemarketing operation, in
3 numerous instances, Defendants’ telemarketing staff begin their sales calls by misrepresenting
4 to consumers that they are affiliated with the other telemarketing operation with whom the
5 consumer already has a relationship.

6 28. In numerous instances, they state that they are calling from “the online development
7 office for [the lead source],” and that they are calling because they are the consumers’ “start up
8 specialist” and would “like to cover the next steps.” In numerous instances, they specifically
9 identify and refer to consumers’ newly registered websites by URL name, strongly implying
10 that the caller is familiar with consumers’ previous efforts to develop a new online business.

11 29. In numerous instances, passwords are included in the lead data that Defendants purchase
12 from other telemarketing operations. These passwords are associated with specific consumers
13 who were instructed to speak only to those callers offering business development products and
14 services who can provide the password. Defendants use the passwords associated with the leads
15 when they call consumers to persuade them to speak with them.

16 30. As a result, Defendants’ telemarketing staff mislead consumers to believe that the
17 Defendants are connected to or affiliated with the companies that sold the products or services
18 that the consumers already purchased.

19 31. Defendants’ telemarketers further compound consumers’ confusion by failing to
20 promptly disclose that the purpose of the call is to sell an additional product or service.
21 Defendants’ telemarketers therefore mislead consumers to believe that Defendants are calling to
22 fulfill or otherwise provide a service already purchased.

Misrepresentations to Obtain Consumers’ Personal Financial Information

23 32. Defendants charge consumers as much as several thousand dollars for each of their
24 various products and services. Defendants do not provide their telemarketing sales staff with a
25 price list for their products and services. Instead, the exact price typically depends on the
26 amount of savings and credit consumers have available.

27 33. In numerous instances, Defendants’ telemarketers probe consumers’ financial
28 circumstances and financial account information during sales calls in order to determine the
prices they can charge and thereby maximize sales. They ask consumers for their credit card
numbers, issuing bank names, credit limits, and current balances, claiming that they will use this

1 information to determine whether consumers “qualify” to work with Defendants. Defendants’
2 telemarketers misrepresent that thousands of people purchase their program each week.

3 34. In numerous instances, Defendants’ telemarketers tell consumers that they need
4 consumers’ personal financial information to help them determine whether they can meet their
5 financial goals, stating that Defendants’ “primary goal is to help you create an additional source
6 of income . . . in order to make sure we set you up with the right business plan and decide how
7 much you need to make.”

8 35. In numerous instances, Defendants’ telemarketers then call the issuing banks for
9 consumers’ credit cards to verify consumers’ available credit. In some instances, Defendants’
10 telemarketers direct and help consumers to open new lines of credit or increase their credit
11 limits with issuing banks.

12 36. Defendants’ telemarketers’ representations about how they are using consumers’
13 financial information are false because their telemarketers do not use the information for these
14 purposes. Instead, in numerous instances, Defendants’ telemarketers use this information to
15 decide how much to charge consumers for products and services, and how many products and
16 services to sell them. The more credit consumers have on hand, the more Defendants’
17 telemarketers ask them to pay.

18 **Misrepresentations About Costs and Earnings**

19 37. In numerous instances, Defendants’ telemarketers persuade consumers to purchase their
20 products and services by claiming that consumers ultimately will not have to pay for the charges
21 out of their own pocket. They encourage consumers to use their personal credit cards to pay for
22 the program as part of a so-called “OPM” strategy, specifically, using Other People’s Money
23 (e.g., the bank’s money). Defendants’ telemarketers claim that consumers who purchase
24 Defendants’ products and services will earn enough money from their future businesses to
25 recoup the purchase price.

26 38. Defendants’ claim about recouping the purchase price is false because, in numerous
27 instances, consumers who purchase Defendants’ products and services are not able to recoup the
28 purchase cost from future business income. In fact, in numerous instances, consumers who
29 purchase Defendants’ products and services are never able to establish an operating business.

30 39. In numerous instances, Defendants’ telemarketers ask consumers about their financial
31 goals and how much they want to earn from the future business. In numerous instances,

1 Defendants' telemarketers tell consumers that their stated financial goals of several thousand
2 dollars a month are obtainable using Defendants' products and services.

3 40. Many of the consumers who purchased Defendants' products and services did not earn
4 substantial income of thousands of dollars a month from future businesses. In fact, in most
5 instances, consumers who purchased Defendants' products and services were never able to
6 establish an operating business.

7 **Misrepresentations About the Scope and Nature of Products and Services Provided**

8 41. In numerous instances, Defendants' telemarketers tell consumers that Defendants'
9 products and services will drive substantially more purchasers to consumers' ecommerce
10 websites.

11 42. In numerous instances, Defendant's products and services do not drive substantially more
12 purchasers to consumers' ecommerce websites. In fact, many consumers who purchase
13 Defendants' products and services do not end up with a functional website.

14 **Top Shelf and Position Gurus Incur Excessive Chargebacks**

15 43. Consumers have the ability to dispute charges that appear on their credit card bills by
16 initiating what is known as a "chargeback" with their issuing bank. The chargeback process is
17 intended to protect consumers from fraud and unauthorized charges on their credit card bills.

18 44. Credit card associations such as VISA and MasterCard have rules regarding the
19 chargeback process. The rules provide that when a consumer disputes a charge through the
20 chargeback process, the consumer's issuing bank provisionally credits the consumer's credit
21 card for the amount of the disputed charge. The consumer's dispute is then relayed to the
22 merchant, which in turn, may challenge the attempted chargeback by arguing the charge was, in
23 fact, valid. If the merchant challenged the attempted chargeback, the credit card association
24 rules govern the manner in which the dispute is resolved.

25 45. Defendants vigorously defend against chargebacks from dissatisfied customers.
26 Defendants dispute chargebacks by relying on a 3-day cancellation provision in their service
27 agreements. However, Defendants typically schedule several appointments with consumers
28 during those first three days, teaching them how to use social media sites such as Facebook,
Twitter, and Pinterest, and thereby keeping them occupied and preventing cancellations.

46. Defendants also vigorously dispute chargebacks by providing copies of consumers'
service agreements and screen shots of work that Defendants purport to have completed for

1 those consumers. In numerous instances, Defendants' customers who sought chargebacks have
2 stated that they did not know if Defendants actually provided the purported products and
3 services or, if the Defendants did, the customers did not know how to use the products and
4 services because they were not adequately shown how to use them.

5 47. Despite Defendants' efforts to challenge these chargeback requests, Corporate
6 Defendants still incurred excessive chargeback rates indicative of deceptive practices. For
7 example, in 2017, Defendant Top Shelf had a chargeback rate of approximately 38% and
8 Defendant Position Gurus had a chargeback rate of approximately 11.9%. A chargeback rate of
9 greater than 1% is generally considered excessive by the credit card associations.

10 48. Defendants Stacy Griego and Samuel Cohen Brown opened merchant accounts for Top
11 Shelf, and each of the Individual Defendants had access to or were informed about consumers'
12 individual chargeback requests to, and the chargeback rates of, the Corporate Defendants.

13 49. In numerous instances, Defendants only provide refunds or partial refunds to consumers
14 who complain to law enforcement authorities or the Better Business Bureau. In numerous
15 instances, when Defendants provide refunds or partial refunds, they first require those
16 consumers to retract or withdraw their complaints to law enforcement authorities or the Better
17 Business Bureau.

Prohibited Contract Provision

18 50. Since 2015 and continuing until approximately February 2019, Defendants used, in their
19 form contracts offered to thousands of consumers in the course of selling their goods and
20 services nationwide, the following provision:

Prohibited Practices & Non-Disparagement

- 21 a. Client shall not . . . refer, or encourage others to refer, to Position
22 Guru's [sic]/Top Shelf, its customers, owners, officers, directors,
23 personnel, agents, representatives or affiliates on any manner that is
24 illegal, fraudulent, threatening, abusive, defamatory, or obscene, or that
25 could cause damage or adversely affect its customers, reputation,
26 business, and property, services, or products in any manner.
- 27 b. Client shall not make or encourage others to make any statement or
28 release any information that is intended to, or reasonably could be
foreseen to, embarrass, criticize, damage, or adversely affect Position

1 Guru's [sic]/Top Shelf, its customers, owners, officers, directors,
2 personnel, agents, representatives, or affiliates. A statement or release
3 of any information under this section includes, but is not limited to,
4 posting an internet websites, bulletin boards, blogs, or discussion
5 groups, and submission to any publication.

- 6 c. Due to the difficulty of ascertaining the pecuniary amount of damages
7 caused by any violation of this section, the parties agree that for each
8 violation of this section, the violating party shall pay the damaged party
9 liquidated damages in an amount not less than ten (10) times the annual
10 fee for all Services to which this Agreement applies. Client agrees that
11 this liquidated damages provision is a reasonable estimate of the
12 damage caused to Position Guru's [sic]/Top Shelf due to a violation of
13 this section.

14 Copies of Defendants' "Service Agreement" that include this paragraph are attached
15 hereto as **Exhibit A** at pages A-6 and A-15. Defendants' form contracts were in
16 effect on or after December 14, 2017.

17 **Defendants' Continuing Law Violations**

18 51. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to
19 believe that Defendants are violating or are about to violate laws enforced by the Commission
20 because, among other things, Defendants engaged in their unlawful acts and practices
21 knowingly, repeatedly over a period of four and a half years, and despite knowledge of
22 numerous complaints. Further, Defendants remain in the telemarketing business and maintain
23 the means, ability, and incentive to continue or resume their unlawful conduct.

24 **VIOLATIONS OF THE FTC ACT**

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

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

54. As set forth below, Defendants have engaged in violations of Section 5(a) of the FTC Act
in connection with the telemarketing and sale of their marketing-related products and services to
consumers trying to start a home-based Internet business.

COUNT I

(Misrepresentation of Earnings)

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3 55. In numerous instances, in connection with the advertising, marketing, promotion, offering
4 for sale, or sale of Defendants' products and services, Defendants represent, directly or
5 indirectly, expressly or by implication, that consumers who purchase Defendants' products and
6 services:

7 a. will recoup the cost of Defendants' products and services through business
8 earnings; and/or

9 b. will likely earn substantial income, such as several thousand dollars monthly.

10 56. In truth and in fact, in numerous instances in which Defendants have made the
11 representations set forth in Paragraph 55, consumers who purchase Defendants' products and
12 services:

13 a. do not recoup the cost of Defendants' products and services through business
14 earnings; and/or

15 b. do not earn substantial income, such as several thousand dollars monthly.

16 57. Defendants' representations set forth in Paragraph 55 are false or misleading or are not
17 substantiated at the time the representations are made.

18 58. Therefore, Defendants' representations as set forth in Paragraph 55 are false and
19 misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
20 15 U.S.C. § 45(a).

COUNT II

(Misrepresentation Regarding Products and Services Provided)

21 59. In numerous instances, in connection with the advertising, marketing, promotion, offering
22 for sale, or sale of Defendants' products and services, Defendants represent, directly or
23 indirectly, expressly or by implication, that Defendants' products and services will drive
24 substantially more purchasers to consumers' ecommerce websites.

25 60. In truth and in fact, in numerous instances in which Defendants have made the
26 representation set forth in Paragraph 59, Defendants' products and services do not drive
27 substantially more purchasers to consumers' ecommerce websites.

28 61. Defendants' representation set forth in Paragraph 59 is false or misleading or is not
substantiated at the time the representation is made.

1 62. Therefore, Defendants’ representation as set forth in Paragraph 59 is false and misleading
2 and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
3 § 45(a).

4 **COUNT III**

5 **(Misrepresentation of Defendants’ Need for Consumers’ Financial Information)**

6 63. In numerous instances, in connection with the advertising, marketing, promotion, offering
7 for sale, or sale of Defendants’ products and services, Defendants represent, directly or
8 indirectly, expressly or by implication, that Defendants need to obtain consumers’ financial
9 information to determine whether consumers are qualified to use Defendants’ products or
10 services or whether consumers will be able to reach their financial goals.

11 64. In truth and in fact, in numerous instances in which Defendants have made the
12 representations set forth in Paragraph 63, Defendants do not use consumers’ financial
13 information to determine whether consumers are qualified to use Defendants’ products or
14 services or whether consumers will be able to reach their financial goals.

15 65. Therefore, Defendants’ representations as set forth in Paragraph 63 are false and
16 misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
17 15 U.S.C. § 45(a).

18 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

19 66. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
20 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101–6108, in
21 1994. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and
22 amended certain sections thereafter.

23 67. Defendants are “seller[s]” and “telemarketer[s]” engaged in “telemarketing” as defined
24 by the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg).

25 68. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by
26 implication, any material aspect of the performance, efficacy, nature or central characteristics of
27 goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

28 69. The TSR requires telemarketers to disclose truthfully, promptly, and in a clear and
conspicuous manner to the person receiving the call: (1) the identity of the seller; (2) that the
purpose of the call is to sell goods and services; and (3) the nature of the goods and services. 16
C.F.R. § 310.4(d)(1), (2), and (3).

1 70. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section
2 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes and unfair or
3 deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act,
4 15 U.S.C. § 45(a).

5 **COUNT IV**

6 **(Misrepresentation of Performance, Efficacy, Nature,
7 Characteristics of Goods and Services Sold)**

8 71. In numerous instances in connection with the telemarketing offers to sell Defendants'
9 product and services, Defendants, directly or indirectly, expressly or by implication, make
10 misrepresentations regarding the material aspects of the performance, efficacy, nature, or
11 essential characteristics of their products and services, such as:

- 12 a. consumers who purchase Defendants' products and services will recoup the cost
13 through business earnings;
- 14 b. consumers who purchase Defendants' products and services are likely to earn
15 substantial income, such as several thousand dollars monthly; and
- 16 c. Defendants' products and services will drive substantially more purchasers to
17 consumers' ecommerce websites.

18 72. In truth and in fact, in numerous instances in which Defendants have made the
19 representations set forth in Paragraph 71:

- 20 a. consumers who purchase Defendants' products or services do not recoup the
21 purchase costs through business earnings;
- 22 b. consumers who purchase Defendants' products and services do not earn
23 substantial income, such as several thousand dollars monthly; and
- 24 c. Defendants' products and services do not drive substantially more purchasers to
25 consumers' ecommerce websites.

26 73. Therefore, Defendants' acts and practices, as described in Paragraph 71, violate Section
27 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT V

**(Failure to Disclose the Identity, Purpose of the Call,
And Nature of Products and Services Sold)**

74. In numerous instances in connection with the telemarketing offers to sell Defendants' products and services, Defendants, directly or indirectly, fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call:

- a. the identity of the seller;
- b. that the purpose of the call is to sell goods or services; and
- c. the nature of the goods or services.

75. Defendants' acts or practices, as described in Paragraph 74, violate Section 310.4(d)(1), (2), and (3) of the TSR, 16 C.F.R. § 310.4(d)(1), (2), and (3).

VIOLATION OF THE CONSUMER REVIEW FAIRNESS ACT OF 2016

76. The Consumer Review Fairness Act of 2016 ("CRFA"), Pub. L. No. 114-258, 15 U.S.C. § 45b, was enacted on December 14, 2016. As of March 14, 2017, Section 2(b) of the CRFA renders void, and Section 2(c) of the CRFA prohibits the offering of, provisions in form contracts that restrict individual consumers' ability to communicate reviews, performance assessments, and similar analyses about a seller's products, services, or conduct; or that impose a penalty or fee against individual consumers who engage in such communications. 15 U.S.C. § 45b(a)(2), 45b(b)(1), and 45b(c).

77. Plaintiff FTC is authorized to enforce Section 2(c) of the CRFA in the same manner, and by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the FTC Act, 15 U.S.C. §§ 41-58, were incorporated into and made a part of the CRFA. 15 U.S.C. § 45b(d)(2)(A). The FTC's enforcement authority under the CRFA applies to contracts in effect on or after December 14, 2017. 15 U.S.C. § 45b(i)(2).

78. Pursuant to 15 U.S.C. § 45b(d)(1), a violation of 15 U.S.C. § 45b(c) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B).

COUNT VI
(CRFA Violation)

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3 79. As described in Paragraph 50, Defendants have offered, in the course of selling their
4 goods or services, form contracts, as that term is defined in 15 U.S.C. § 45b(a)(3), that contain a
5 provision made void by 14 U.S.C. § 45b(b)(1).

6 80. Therefore, the acts and practices set forth in Paragraph 50 occurring on or after March 14,
7 2017 violate Section 2(c) of the CRFA, 15 U.S.C. § 45b(c).

CONSUMER INJURY

8 81. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a
9 result of Defendants' violations of the FTC Act, the Telemarketing Act, the TSR, and the
10 CRFA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or
11 practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure
12 consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

19 83. Section 19 of the FTC Act, 15 U.S.C. § 57b, Section 6(b) of the Telemarketing Act, 15
20 U.S.C. § 6105(b), and Section 2(d) of the CRFA, 15 U.S.C. § 45b(d) authorize this Court to
21 grant such relief as the Court finds necessary to redress injury to consumers resulting from
22 Defendants' violations of the FTC Act, TSR and the CRFA, including the rescission or
23 reformation of contracts and the refund of money.

PRAYER FOR RELIEF

24 84. Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C.
25 §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), Section 2(d) of
26 the CRFA, 15 U.S.C. § 45b(d), and the Court's own equitable powers, requests that the Court:

27 A. Enter a permanent injunction to prevent future violations of the FTC Act, the
28 TSR, and the CRFA by Defendants;

1 B. Award such relief as the Court finds necessary to redress injury to consumers
2 resulting from Defendants' violations of the FTC Act, the TSR, and the CRFA, including
3 rescission or reformation of contracts, restitution, the refund of monies paid, and the
4 disgorgement of ill-gotten monies; and

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

7
8 Respectfully submitted,

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