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09-CV-05380-CMP

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JUN 25 2009  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA  
BY \_\_\_\_\_

*C09mc22*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
MCS PROGRAMS, LLC, a Washington  
Limited Liability Company, also doing  
business as Mutual Consolidated Savings;  
UNITED SAVINGS CENTER, INC., a  
Washington corporation, also doing business  
as Mutual Consolidated Savings; USC  
PROGRAMS, LLC, a Washington Limited  
Liability Company, also doing business as  
Mutual Consolidated Savings; PAUL  
MORRIS THOMPSON, individually and as an  
officer of MCS Programs, LLC, United  
Savings Center, Inc., and USC Programs, LLC;  
and MIRANDA CAVENDAR, also known as  
Miranda Cavender, individually and as a  
manager of MCS Programs, LLC, United  
Savings Center, Inc., and USC Programs, LLC,  
  
Defendants.

Case No. **C09 5380** *Rob*

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER RELIEF

[FILED UNDER SEAL]

ORIGINAL

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
JUL 6 - 2009  
DAVID J. MALAND, CLERK  
BY  
DEPUTY \_\_\_\_\_

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint against  
MCS Programs, LLC, United Savings Center, Inc., USC Programs, LLC, Paul Morris Thompson, and  
Miranda Cavendar (collectively, "Defendants"), alleges:

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

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MCS PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; UNITED SAVINGS CENTER, INC., a Washington corporation, also doing business as Mutual Consolidated Savings; USC PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; PAUL MORRIS THOMPSON, individually and as an officer of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC; and MIRANDA CAVENDER, individually and as a manager of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC,

Defendants.

Case No. C09-5380RBL

**TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT OF TEMPORARY RECEIVER, IMMEDIATE ACCESS TO BUSINESS PREMISES, LIMITED EXPEDITED DISCOVERY, AND AN ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MCS PROGRAMS, LLC, a Washington limited liability company, also doing business as Mutual Consolidated Savings; UNITED SAVINGS CENTER, INC., a Washington corporation, also doing business as Mutual Consolidated Savings; USC PROGRAMS, LLC, a Washington limited liability company, also doing business as Mutual Consolidated Savings; PAUL MORRIS THOMPSON, individually and as an officer of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC; and MIRANDA CAVENDER, individually and as a manager of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC;

Civil No. C09-5380RBL

**NOTICE TO LIFT SEAL**

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09-CV-05380-CMP

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RECEIVED  
JUN 25 2009  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA  
BY \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MCS PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; UNITED SAVINGS CENTER, INC., a Washington corporation, also doing business as Mutual Consolidated Savings; USC PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; PAUL MORRIS THOMPSON, individually and as an officer of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC; and MIRANDA CAVENDAR, also known as Miranda Cavender, individually and as a manager of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC,

Defendants.

Case No. **C09 5380** *Rob*

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

[FILED UNDER SEAL]

ORIGINAL

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint against MCS Programs, LLC, United Savings Center, Inc., USC Programs, LLC, Paul Morris Thompson, and Miranda Cavendar (collectively, "Defendants"), alleges:

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

1 preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution,  
2 disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in  
3 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's  
4 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

#### 5 JURISDICTION AND VENUE

6 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
7 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

8 3. Venue in the United States District Court for the Western District of Washington is  
9 proper under 28 U.S.C §1391(b) and (c), and 15 U.S.C. §§ 53(b).

#### 10 PLAINTIFF

11 4. Plaintiff FTC is an independent agency of the United States Government created by  
12 statute. 15 U.S.C. §§ 41- 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the  
13 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting  
14 commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-  
15 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R.  
16 Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC is  
17 authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the  
18 FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including  
19 restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

#### 20 DEFENDANTS

21 5. Defendant **MCS PROGRAMS, LLC**, is a Washington corporation with its principal  
22 place of business at 1215 Earnest S. Brazill Street, Suite 33, Tacoma, Washington. MCS Programs also  
23 does business as Mutual Consolidated Savings, among other names. Defendant MCS Programs  
24 transacts or has transacted business in the Western District of Washington.

25 6. Defendant **UNITED SAVINGS CENTER, INC.**, is a Washington corporation with its  
26 principal place of business at 1215 Earnest S. Brazill Street, Suite 33, Tacoma, Washington. United  
27 Savings Center also does business as Mutual Consolidated Savings, among other names. Defendant  
28 United Savings Center transacts or has transacted business in the Western District of Washington.





1 have operated as a common enterprise, each of them is jointly and severally liable for the deceptive  
2 and unfair acts and practices alleged below.

3 **COMMERCE**

4 11. At all times relevant 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 U.S.C.  
6 § 44.

7 **DEFENDANTS' BUSINESS PRACTICES**

8 12. Since at least 2006, Defendants have telemarketed a "rapid debt reduction" program to  
9 consumers nationwide in the U.S. and in Canada. In many instances, the telemarketing calls are  
10 initiated by a live representative. In many other instances, they are initiated using a telemarketing  
11 service that delivers prerecorded voice messages, known as "voice broadcasting" or "robocalling."  
12 Defendants also market their program via the Internet on several websites, including  
13 [www.mcsprograms.com](http://www.mcsprograms.com), [www.uscprograms.com](http://www.uscprograms.com), and [www.mutualsavingsinc.com](http://www.mutualsavingsinc.com). Defendants tell  
14 consumers that if they purchase Defendants' program, Defendants will obtain substantially lower  
15 interest rates for the consumers' credit cards by negotiating with the card issuers. Defendants also  
16 claim that their program will provide substantial savings to consumers, typically \$2,500 or more, and  
17 enable consumers to pay off their debt three to five times faster without increasing their monthly  
18 payments. Defendants and their telemarketers also expressly promise that a consumer can obtain a full  
19 refund from Defendants if the consumer does not save at least the promised amount, typically \$2,500  
20 or more. Defendants' websites echo the telemarketers' refund promise, stating that there is no risk to  
21 the consumer because of the availability of a refund.

22 13. Defendants sometimes obtain the consumer's credit card number before contacting the  
23 consumer. Defendants and their telemarketers use this information to generate consumer trust by  
24 displaying knowledge of the consumers' accounts, which helps mislead the consumer about the  
25 relationship between the bank issuing the credit card and Defendants.

26 14. Defendants typically charge a fee of between \$690 and \$899 USD for their "rapid debt  
27 reduction" program. Defendants represent that the amount of the fee will be quickly offset by savings  
28 achieved under the Defendants' program.

1 15. Defendants do not disclose to Canadian consumers that the fee for their program is in  
2 U.S. Dollars. Thus, when Canadian consumers authorize what they believe is a fee of \$690 Canadian  
3 Dollars, they may later find they have been charged \$800 Canadian Dollars or more as a result of the  
4 currency exchange rate.

5 16. In many instances, Defendants do not obtain substantially lower credit card interest  
6 rates for consumers. Thus, in those instances consumers do not save thousands of dollars, and they are  
7 unable to pay off their debts three to five times faster as a result of the promised reduction of their  
8 credit card interest rates.

9 17. After a consumer has paid for the Defendants' service, Defendants send the consumer  
10 general information about finances, along with a form for the consumer to complete and return listing  
11 all of the consumer's indebtedness. Sometimes, Defendants then send the consumer a computer-  
12 generated accelerated payment schedule or "Rapid Debt Reduction" plan, that, if adhered to, will  
13 purportedly allow the consumer to pay off his or her debts years faster than if the consumer makes  
14 only minimum monthly payments. In many instances, after Defendants have failed to achieve the  
15 promised interest rate reduction for the consumer, Defendants claim their "Rapid Debt Reduction"  
16 plan shows how the promised savings are realized by increasing the consumer's monthly payments.  
17 Defendants do not disclose to consumers, prior to their purchase of the program, that the "Rapid Debt  
18 Reduction" plan is the basis for the savings claims and that the promised savings may take decades to  
19 achieve.

20 18. In many instances, Defendants do not honor their promise to refund if they do not save  
21 consumers the amount promised, instead claiming that the consumer has failed to comply with  
22 previously undisclosed conditions, or that Defendants have complied with their obligations in some  
23 way other than providing the promised interest rate reduction and savings. When Defendants do  
24 provide a refund, in many instances they deduct a "restocking fee" of 12.5%, also undisclosed prior to  
25 charging a consumer's credit card.

26 19. While telemarketing their program, Defendants or their telemarketers have made  
27 numerous calls to telephone numbers on the National Do Not Call Registry ("Registry"), as well as to  
28 consumers who have previously asked Defendants not to call them again. In some instances,

1 Defendants or their telemarketers also “spoof” their calls by transmitting phony Caller ID information  
2 so that call recipients do not know the source of the calls.

3 20. In numerous instances, Defendants, acting directly or through one or more  
4 intermediaries, have initiated telemarketing calls that failed to disclose truthfully, promptly, and in a  
5 clear and conspicuous manner to the person receiving the call: the identity of the seller; that the  
6 purpose of the call is to sell goods or services; or the nature of the goods or service. In numerous  
7 instances since December 1, 2008, Defendants, acting directly or through one or more intermediaries,  
8 have initiated prerecorded telemarketing calls to consumers that failed to promptly make such  
9 disclosures, or to immediately thereafter disclose the mechanism for asserting a Do Not Call request.

#### 10 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

11 21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or  
12 practices in or affecting commerce,” including such acts or practices involving foreign commerce that  
13 “involve material conduct occurring within the United States.”

14 22. Misrepresentations or omissions of material fact constitute deceptive acts or practices  
15 prohibited by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### 16 **COUNT ONE**

##### 17 **Misrepresentations in Violation of Section 5**

18 23. In numerous instances, in connection with the marketing, offering for sale, or sale of  
19 Defendants’ “debt reduction” program, Defendants have represented, expressly or by implication, that:

- 20 A. Consumers who purchase Defendants’ “debt reduction” program will have their  
21 credit card interest rates reduced substantially;
- 22 B. Consumers who purchase Defendants’ “debt reduction” program will save, in a  
23 short time, hundreds or thousands of dollars, or more than the amount of the fees  
24 consumers pay; and
- 25 C. Consumers who purchase Defendants’ “debt reduction” program will be able to  
26 pay off their debt three to five times faster without increasing their monthly  
27 payments.
- 28

1           24. In truth and in fact, in numerous instances in which Defendants have made the  
2 representation above:

- 3           A. Consumers who purchase Defendants' "debt reduction" program do not have  
4 their credit card interest rates reduced substantially;
- 5           B. Consumers who purchase Defendants' "debt reduction" program do not save, in  
6 a short time, hundreds or thousands of dollars, or more than the amount of the  
7 fees consumers pay; and
- 8           C. Consumers who purchase Defendants' "debt reduction" program are not able to  
9 pay off their debt three to five times faster without increasing their monthly  
10 payments.

11           25. Therefore, the representations set forth in Paragraph 23 above are false and misleading  
12 and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
13 § 45(a).

14   **COUNT TWO**

15                                   **Failure to Disclose Material Refund Conditions in Violation of Section 5**

16           26. In numerous instances, in connection with the marketing, offering for sale, or sale of  
17 Defendants' "debt reduction" program, Defendants have represented, expressly or by implication, that  
18 consumers who purchase Defendants' "debt reduction" program are guaranteed a full refund if they do  
19 not achieve the amount of savings represented by Defendants.

20           27. In numerous instances in which Defendants have made the representation above,  
21 Defendants have failed to disclose, or to disclose adequately, to consumers, before charging  
22 consumers' credit cards, that:

- 23           A. Consumers who do not achieve the guaranteed savings as a result of Defendants  
24 negotiating reduced interest rates with consumers' creditors may be denied a full  
25 refund if the amount of savings guaranteed potentially can be achieved by  
26 following a multi-year, accelerated debt payment schedule provided to  
27 consumers by Defendants;
- 28

- 1 B. Defendants may impose other conditions on the refund guarantee, such as  
2 requiring the refund claim be made within a minimum or maximum period of  
3 time after the consumer was charged; and  
4 C. If the consumer requests a refund and any refund is given, Defendants may  
5 retain 12% or more of the amount paid by the consumer.

6 28. Defendants' failure to disclose or disclose adequately the material information  
7 described in Paragraph 27, in light of the representation described in Paragraph 26, constitutes a  
8 deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **COUNT THREE**

10 **Failure to Disclose Material Fact to Canadian Consumers in Violation of Section 5**

11 29. In numerous instances, in connection with the marketing, offering for sale, or sale of  
12 Defendants' "debt reduction" program to Canadian consumers, Defendants have represented, expressly  
13 or by implication, that Canadian consumers who purchase Defendants' "debt reduction" program will  
14 be charged a specific fee, typically between \$690 and \$899.

15 30. In numerous instances in which Defendants have made the representation above,  
16 Defendants have failed to disclose, or to disclose adequately, to Canadian consumers, before charging  
17 consumers' credit cards, that the specified fee for their program is in U.S. rather than Canadian  
18 Dollars. Thus, Canadian consumers who authorize a fee of "\$690" may later find that they have been  
19 charged \$800 Canadian or more as a result of the currency exchange rate.

20 31. Defendants' failure to disclose or disclose adequately the material information  
21 described in Paragraph 30, in light of the representation described in Paragraph 29, constitutes a  
22 deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

24 **AND THE NATIONAL DO NOT CALL REGISTRY**

25 32. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive  
26 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994.  
27 On August 16, 1995, the FTC adopted the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310,  
28 which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR. 68

1 Fed. Reg. 4580, 4669. On August 29, 2008, the FTC amended the TSR again. 73 Fed. Reg. 51164,  
2 51204.

3 33. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing," and  
4 Defendants have initiated, or have caused telemarketers to initiate, "outbound telephone calls" to  
5 consumers, as those terms are defined in the TSR, 16 C.F.R. § 310.2(u), (z), (bb) and (cc).

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

8 35. The TSR prohibits telemarketers and sellers from misrepresenting, directly or by  
9 implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature,  
10 or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R.  
11 § 310.3(a)(2)(iii).

12 36. The TSR also prohibits sellers and telemarketers from failing to disclose truthfully in a  
13 clear and conspicuous manner, before a customer pays for goods or services, the total purchase cost  
14 and, if the seller or telemarketer makes a representation about a refund or cancellation policy, a  
15 statement of all material terms and conditions of such policy. 16 C.F.R. § 310.3(a)(1)(i) and (iii).

16 37. As of March 31, 2003, the TSR also prohibits any seller or telemarketer from  
17 "[d]isclosing or receiving, for consideration, unencrypted consumer account numbers for use in  
18 telemarketing." 16 C.F.R. § 310.4(a)(5).

19 38. The TSR requires telemarketers in an outbound telephone call to disclose truthfully,  
20 promptly, and in a clear and conspicuous manner, the following information:

- 21 A. The identity of the seller;  
22 B. That the purpose of the call is to sell goods or services; and  
23 C. The nature of the goods or services.

24 16 C.F.R. § 310.4(d)(1), (2), and (3).

25 39. Since December 1, 2008, the TSR has prohibited a telemarketer from engaging, and a  
26 seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a  
27 prerecorded message unless the message immediately discloses:

- 28 A. The identity of the seller;

1 B. That the purpose of the call is to sell goods or services; and

2 C. The nature of the goods or services.

3 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

4 40. The TSR also prohibits sellers and telemarketers from initiating an outbound telephone  
5 call to any person when that person previously has stated that he or she does not wish to receive an  
6 outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

7 16 C.F.R. § 310.4(b)(1)(iii)(A).

8 41. Since December 1, 2008, the TSR has prohibited a telemarketer from engaging, and a  
9 seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a  
10 prerecorded message unless, immediately following the disclosures described in paragraph 39, the  
11 prerecorded message discloses how the person called can assert a Do Not Call request pursuant to 16  
12 C.F.R. § 310.4(b)(1)(iii)(A). The disclosure must state that the person called can assert the request by  
13 using:

14 A. an automated interactive voice and/or keypress-activated opt-out mechanism, in  
15 the case of a call that could be answered in person by a consumer; or

16 B. a toll-free telephone number, in the case of a call that could be answered by an  
17 answering machine or voicemail service. The toll-free number must connect  
18 directly to an automated interactive voice or keypress-activated opt-out  
19 mechanism.

20 In either case, the opt-out mechanism must automatically add the number called to the seller's entity-  
21 specific Do Not Call list and immediately disconnect the call once invoked. In the case of a call that  
22 could be answered in person, the opt-out mechanism must be available for use at any time during the  
23 message, and in the case of a call that could be answered by an answering machine or voicemail  
24 service, the opt-out mechanism must be accessible at any time throughout the duration of the  
25 telemarketing campaign. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(A)-(B).

26 42. In addition, the TSR, as amended in 2003, establishes a "do-not-call" registry (the  
27 "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not  
28 wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers

1 on the Registry without charge either through a toll-free telephone call or over the Internet at  
2 www.donotcall.gov.

3 43. Since October 17, 2003, sellers and telemarketers have been prohibited from calling  
4 numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

5 44. Since January 29, 2004, sellers and telemarketers have been required to transmit or  
6 cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier,  
7 the name of the telemarketer, to any caller identification service in use by a recipient of a  
8 telemarketing call, or, alternately, to transmit or cause to be transmitted the name of the seller on  
9 behalf of which a telemarketing call is placed and the seller's customer service telephone number.  
10 16 C.F.R. § 310.4(a)(7).

11 45. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c) and  
12 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or  
13 deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act,  
14 15 U.S.C. § 45(a).

#### 15 **COUNT FOUR**

##### 16 **Misrepresentations and False and Misleading Statements in Violation of the TSR**

17 46. In numerous instances, in the course of telemarketing goods and services, Defendants  
18 have misrepresented, expressly or by implication, that:

- 19 A. Consumers who purchase Defendants' "debt reduction" program will have their  
20 credit card interest rates reduced substantially;
- 21 B. Consumers who purchase Defendants' "debt reduction" program will save, in a  
22 short time, hundreds or thousands of dollars, or more than the amount of the fees  
23 consumers pay; and
- 24 C. Consumers who purchase Defendants' "debt reduction" program will be able to  
25 pay off their debt three to five times faster without increasing their monthly  
26 payments.

27 47. Defendants' acts and practices, as alleged in Paragraph 46 above, are deceptive  
28



1 telemarketing acts or practices that violate Sections 310.3(a)(2)(iii) and 310.3(a)(4) of the TSR,  
2 16 C.F. R. §§ 310.3(a)(2)(iii) and 310.3(a)(4).

3 **COUNT FIVE**

4 **Failure to Disclose Material Refund Conditions in Violation of the TSR**

5 48. In numerous instances, in the course of telemarketing goods and services, Defendants  
6 have represented, expressly or by implication, that consumers who purchase Defendants' "debt  
7 reduction" program are guaranteed a full refund if they do not achieve the amount of savings  
8 represented by Defendants.

9 49. In numerous instances in which Defendants have made the representation above,  
10 Defendants have failed to disclose, or to disclose adequately, to consumers, before charging  
11 consumers' credit cards, that:

- 12 A. Consumers who do not achieve the guaranteed savings as a result of Defendants  
13 negotiating reduced interest rates with consumers' creditors may be denied a full  
14 refund if the amount of savings guaranteed potentially can be achieved by  
15 following a multi-year, accelerated debt payment schedule provided to  
16 consumers by Defendants;
- 17 B. Defendants may impose other conditions on the refund guarantee, such as  
18 requiring the refund claim be made within a minimum or maximum period of  
19 time after the consumer was charged; and
- 20 C. If the consumer requests a refund, and any refund is given, Defendants may  
21 retain 12% or more of the amount paid by the consumer.

22 50. Defendants' acts and practices as alleged in Paragraphs 48-49 are deceptive  
23 telemarketing acts or practices that violate Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R.  
24 § 310.3(a)(1)(iii).

25 **COUNT SIX**

26 **Failure to Disclose Purchase Cost to Canadian Consumers in Violation of the TSR**

27 51. In numerous instances, in connection with the marketing, offering for sale, or sale of  
28 Defendants' "debt reduction" program to Canadian consumers, Defendants have represented, expressly

1 or by implication, that Canadian consumers who purchase Defendants' "debt reduction" program will  
2 be charged a specific fee, typically between \$690 and \$899.

3 52. In numerous instances in which Defendants have made the representation above,  
4 Defendants have failed to disclose, or to disclose adequately, to consumers, before charging  
5 consumers' credit cards, that the specified fee for their program is in U.S. rather than Canadian  
6 Dollars. Thus, Canadian consumers who authorize a fee of "\$690" may later find that they have been  
7 charged \$800 Canadian or more as a result of the currency exchange rate.

8 53. Defendants' acts and practices as alleged in Paragraphs 51-52 are deceptive  
9 telemarketing acts or practices that violate Section 310.3(a)(1)(i) of the TSR, 16 C.F.R.  
10 § 310.3(a)(1)(i).

#### 11 **COUNT SEVEN**

##### 12 **Violating the National Do Not Call Registry**

13 54. In numerous instances, in connection with telemarketing, Defendants have engaged, or  
14 caused a telemarketer to engage, in initiating an outbound telephone call to a person's telephone  
15 number on the National Do Not Call Registry in violation of Section § 310.4(b)(1)(iii)(B) of the TSR,  
16 16 C.F.R. § 310.4(b)(1)(iii)(B).

#### 17 **COUNT EIGHT**

##### 18 **Failing to Honor Do Not Call Requests**

19 55. In numerous instances, in connection with telemarketing, Defendants have engaged, or  
20 caused a telemarketer to engage, in initiating an outbound telephone call to a person who previously  
21 has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of  
22 Defendants, in violation of the TSR, 16 C.F.R. § 310.4(b)(iii)(A).

#### 23 **COUNT NINE**

##### 24 **Failing to Transmit Caller Identification**

25 56. In numerous instances, in connection with telemarketing, Defendants have failed to  
26 transmit or cause to be transmitted the telemarketer's telephone number, and, when made available by  
27 the telemarketer's carrier, the name of the telemarketer, or, in the alternative, the seller's name and  
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1 customer service telephone number, to caller identification services in use by recipients of  
2 telemarketing calls, in violation of Section 310.4(a)(7) of the TSR, 16 C.F.R. § 310.4(a)(7).

3 **COUNT TEN**

4 **Failing to Make Required Oral Disclosures**

5 57. In numerous instances, in the course of telemarketing goods and services, Defendants  
6 have, in outbound telephone calls, failed to disclose promptly and in a clear and conspicuous manner  
7 to the person receiving the call:

- 8 A. The identity of the seller;  
9 B. That the purpose of the call is to sell goods or services; and  
10 C. The nature of the goods or services.

11 58. Defendants' acts and practices as alleged in Paragraph 57 are abusive telemarketing acts  
12 or practices that violate the TSR, 16 C.F.R. § 310.4(d)(1), (2), and (3).

13 **COUNT ELEVEN**

14 **Initiating Unlawful Prerecorded Messages**

15 59. In numerous instances, on or after December 1, 2008, in the course of telemarketing  
16 goods and services, Defendants have initiated, or caused a telemarketer to initiate, outbound telephone  
17 calls delivering prerecorded messages that do not promptly provide the disclosures required by  
18 § 310.4(d) of the TSR and the further disclosures required by § 310.4(b)(1)(v)(B)(ii)(A)-(B).

19 60. Defendants' acts or practices as alleged in Paragraph 59 are abusive telemarketing acts  
20 or practices that violate the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

21 **CONSUMER INJURY**

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



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d. Award plaintiff the costs of investigating and bringing this action and reasonable attorneys' fees, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: June 25, 2009

Respectfully Submitted,

DAVID C. SHONKA  
Acting General Counsel

CHARLES A. HARWOOD  
Regional Director

Maxine R. Stansell  
MAXINE R. STANSELL # 9418  
ELEANOR DURHAM Member MD Bar  
Attorneys for Plaintiff Federal Trade Commission

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