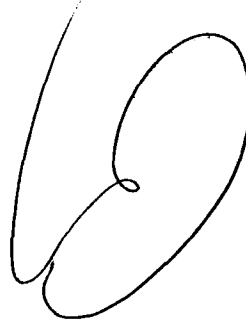


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-20168 - CIV

U.S. District Judge Altonaga / U.S. Magistrate Judge Turnoff

<p>FEDERAL TRADE COMMISSION,</p> <p style="text-align: center;"><b>Plaintiff</b></p> <p style="text-align: center;">v.</p> <p>REMOTE RESPONSE CORPORATION, et. al.,</p> <p style="text-align: center;"><b>Defendants.</b></p>
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CLARENCE MABBOX  
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FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE  
RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, alleges as follows:

1. Plaintiff 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 *et seq.*, and the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. §§ 1693-1693r, to secure preliminary and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for

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engaging in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), for engaging in violations of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and for engaging in violations of Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), Section 205.10(b) and Regulation E, 12 C.F.R. § 205.10(b).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 1693o(c), 6102(c) and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.
3. Venue in the United States District Court for the Southern District of Florida is proper under 15 U.S.C. §53(b) and 28 U.S.C. §§ 1391(b) and (c).

### **THE PARTIES**

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41 *et. seq.* The Commission 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 Commission also enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. In addition, the Commission enforces the EFTA, violations of which are violations of the FTC Act. 15 U.S.C. § 1693o(c). The Commission may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act, the TSR, and the EFTA, and to secure such other equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case, 15 U.S.C. §§ 53(b), 57b and 6105(b).
5. Defendant Remote Response Corporation ("Remote Response") is a Florida corporation with its principal office or place of business in Miami, Florida. At all times relevant to

this complaint, acting individually or in concert with others, Remote Response, also doing business as Amerikash, Global-Amerikash, Instant Way, or Amerikhealth, has provided telemarketing, sales, customer service, and other administrative and marketing services that direct, control, assist or facilitate the acts or practices set forth in this complaint. Remote Response transacts or has transacted business in this district.

6. Defendant Alberto M. Salama (“Alberto Salama”) is a director and the president of Remote Response. At all times relevant to this complaint, acting individually 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. His principal office or place of business is the same as that of Remote Response. Alberto Salama resides in and transacts or has transacted business in this district.
7. Defendant Samuel M. Salama (“Samuel Salama”) is a director and the treasurer of Remote Response. At all times relevant to this complaint, acting individually 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. His principal office or place of business is the same as that of Remote Response. Samuel Salama resides in and transacts or has transacted business in this district.
8. Defendant Elias M. Salama (“Elias Salama”) is a director and secretary of Remote Response. At all times relevant to this complaint, acting individually 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. His principal office or place of business is the same as that of Remote Response. Elias Salama resides in and transacts or has transacted business in this district.

9. Defendant Joseph Bensabat (“Bensabat”) is a director and vice president - marketing of Remote Response. At all times relevant to this complaint, acting individually 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. His principal office or place of business is the same as that of Remote Response. Bensabat resides in and transacts or has transacted business in this district.
10. Defendant Instant Way Corporation (“Instant Way”) is a Florida corporation with its principal office or place of business in Miami Beach, Florida. At all times relevant to this complaint, acting individually or in concert with others, Instant Way has provided marketing, administrative, or management services that direct, control, assist or facilitate the acts or practices set forth in this complaint. Instant Way transacts or has transacted business in this district.
11. Defendant German Espitia (“Espitia”) is the president and sole owner of Instant Way. At all times relevant to this complaint, acting individually 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. His principal office or place of business is the same as that of Instant Way. Espitia resides in and transacts or has transacted business in this district.

### **COMMERCE**

12. The acts and practices of Defendants alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### DEFENDANTS' COURSE OF CONDUCT

13. Since at least March 2004 and continuing thereafter, Remote Response, Alberto Salama, Samuel Salama, Elias Salama, Bensabat, Instant Way, and Espitia (collectively "Defendants"), directly or indirectly, have promoted, telemarketed, marketed, offered to sell, or sold a plastic card that the Defendants have described as a MasterCard and related products to consumers throughout the United States. Defendants also have provided substantial assistance, facilitation, or support to the telemarketers or other sellers who have sold such products on their behalf.
14. Defendants' MasterCards and related products are sold under the name Amerikash. Defendants market these MasterCards and related products via Spanish-language commercials that appear on Spanish-language television stations, such as Telemundo, Telefuturo, and Galavision, and via a Spanish-language Internet website. Through these commercials and the Internet website, Defendants guarantee that consumers who are at least eighteen years old, live in the United States, and have a checking account will receive a MasterCard, regardless of credit history. Defendants' advertisements often promise that consumers who purchase the MasterCard will also receive a combination of several free items, including, for example: one hundred dollars (\$100) in discount coupons for airline travel or a 3-day vacation; a reloadable Amerikash ATM card, pre-loaded with twenty dollars (\$20), that can be used to send money abroad; and a reloadable phone card, pre-loaded with five dollars (\$5), that can be used to make free phone calls to Mexico and throughout the United States. Defendants' commercials and website provide toll-free telephone numbers consumers can call to obtain these products.

15. When consumers call Defendants' toll-free numbers, Defendants' telemarketers often claim that the MasterCard offers 0% interest for five years and a \$2,500 limit (variously described as a "deposit limit" or "user limit" or "line of debit") and that the MasterCard can be used both inside and outside the United States to rent cars, make purchases, withdraw cash from ATM machines, and send money to family and friends abroad. Along with the MasterCard, Defendants' telemarketers typically offer consumers the same "free" items offered in the commercials and on the website.
16. Defendants' telemarketers request consumers' billing information, generally including name, address, bank account or credit card number, bank account routing number, date of birth, and mother's last name. After obtaining this information, Defendants' telemarketers usually ask consumers for their social security numbers or the number on some other form of government identification. Sometimes, if consumers do not have checking accounts or credit cards, Defendants' telemarketers allow consumers to purchase using money orders collected on delivery.
17. After putting consumers on hold for a few seconds, purportedly to see if they have qualified, Defendants' telemarketers congratulate consumers and tell them that they have qualified for the 0% interest and \$2,500 limit. Then, the telemarketers represent that to take advantage of these benefits, the consumers must make an immediate, one-time payment ranging between \$138 and \$200. To mitigate the high fee, Defendants' telemarketers generally tell consumers that they will receive the equivalent of approximately \$125 in the form of \$20 on the ATM card, \$5 on the phone card, and \$100 worth of airline ticket discount coupons or a free 3-day vacation.

18. Once consumers authorize payment, Defendants' telemarketers sometimes tell consumers they are being transferred to a "recorded verification system." The verification process is conducted by a computer-generated voice that begins by asking consumers to give their name, address and checking account routing number or credit card number. Then, the computer voice generally describes the MasterCard as a stored-value card that consumers can "recharge" by putting money onto the card. The computer voice typically tells consumers that they will receive their card in six to ten days. In other instances, this "verification process" is conducted by a telemarketer that sometimes identifies himself or herself as a "supervisor."
19. Next, the computer voice or a telemarketer typically repeats the description of the "free" items that consumers will receive with their MasterCard purchase. The computer voice or telemarketer typically states that the pre-loaded money, including the \$20.00 on the ATM card, will be available when the card is activated. The computer voice or telemarketer generally reminds consumers to call and activate their cards as soon as they receive them so they can begin enjoying them immediately.
20. Often, after verifying the MasterCard sale, the computer voice or telemarketer "upsells" the Amerikhealth discount health plan. "Upselling" includes a telemarketing technique where a seller sells goods or services in an initial transaction, then, during the same telephone call, solicits the purchase of additional goods or services.
21. During the upsell, the computer voice or telemarketer tells consumers that, as a "thank-you" for the Amerikash sales transaction, they and their families will receive a 15-day, free trial membership in the Amerikhealth discount health plan. The computer voice or telemarketer briefly describes the discount health program and states that, after the first

fifteen days, consumers' accounts will be debited approximately \$39.95 for enrollment.

The computer voice or telemarketer tells consumers that this fee will be debited unless they call the toll-free number provided and obtain a cancellation number within the first fifteen days.

22. Typically, consumers are asked if they understand and accept the terms. Some consumers decline this offer, and Defendants' telemarketers, in certain instances, end the call. In other instances, the telemarketers tell consumers who declined the offer to say "yes" to complete the call, and they will not be charged. Many of these consumers follow the telemarketers' instructions and say "yes." After these consumers respond affirmatively, they are told that an additional fee of approximately \$24.95 will be charged to consumers' bank accounts monthly unless they call to cancel and obtain a cancellation code.

Consumers are typically asked to say "yes" if they understand and accept.

23. Neither Defendants' telemarketers nor the computerized verification system make any effort to recapture the last four digits of consumers' account numbers to verify the consumers' consent to place charges for the upsold health plan on the same account consumers used to purchase the MasterCard. The computer voice or telemarketer typically completes the "verification" process by giving consumers a "confirmation number" for the transaction, providing Defendants' customer service telephone number, and telling consumers to "please use the card wisely."

24. Following the "verification" process, Defendants cause debits and charges to be transmitted to consumers' bank accounts and credit card accounts. Defendants typically debit consumers' bank accounts and charge consumers' credit cards for the MasterCard immediately after the initial sales call. In numerous instances, however, consumers do



not receive a MasterCard. In some instances, they receive only some or none of the “free” products Defendants promised would be included with the MasterCard. Of those consumers who do receive some of the “free items,” many indicate that the products do not work.

25. Some consumers receive an application form for a MasterCard (variously described as “*Formulario Para Procesar Su Tarjeta MasterCard*” or “*Formulario Para Envio De Su Tarjeta De Adeudo MasterCard*”), which they are supposed to complete and return (along with an additional fee ranging from \$5.95 to \$15.95 and a copy of the identification card bearing the identification number the consumer gave Defendants during the initial purchase, *e.g.* social security number, driver’s license number, etc.) to obtain the MasterCard. In numerous instances, however, Defendants have failed to send a MasterCard even when consumers returned the application and paid the extra fee.
26. Many consumers call Defendants and try to cancel their purchase and obtain a refund when they do not receive a MasterCard. When consumers call, Defendants routinely have consumers leave messages, but do not return their calls. In some instances, Defendants’ customer service personnel even hang up on consumers. Defendants routinely fail to refund consumers’ money.
27. Defendants typically begin to debit consumers’ bank accounts and charge consumers’ credit cards for the discount health plan around fifteen or more days after the initial sales call. In numerous instances, Defendants cause charges for the health plan to be transmitted to the bank accounts or credit card accounts of consumers who declined the free trial offer. In numerous instances, Defendants also cause charges for the health plan to be transmitted to the bank accounts or credit card accounts of consumers who accept

the free trial offer, but do not receive the membership card sufficiently in advance of the debit or charge to use the trial period promised during the call. Defendants even cause charges for the health plan to be transmitted to some consumers' bank accounts or credit card accounts after Defendants' customer service personnel have told these consumers that their health plan memberships were cancelled, and they would not be charged.

28. These consumers commonly incur unauthorized and unexpected debits and charges of approximately \$39.95 for the initial enrollment fee for the discount health plan. In numerous instances, consumers also are charged the \$24.95 monthly fee for the health plan. In addition, consumers often incur fees for overdrawn accounts or bounced checks when unauthorized debits deplete the balances in their accounts. Some consumers have been charged the monthly fee multiple times in a single month. In some instances, consumers are forced to close their bank accounts to avoid further charges.
29. Consumers who attempt to call "customer service" to obtain a cancellation code to cancel their purchase and prevent further debits are frequently unable to do so. Defendants' customer service representatives frequently hang up on consumers who call to cancel. Many consumers are transferred to answering machines or told that they will be called back, but they are never called. Many consumers who succeed in reaching a customer service representative have been told that they could not cancel.

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

30. Section 5(a) of the FTC Act, 15 U.S.C. §45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Moreover, under Section 5(n) of the FTC Act, an act or practice is "unfair" if it causes or

is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. §45(n).

**Deceptive Practices**

**COUNT ONE**

31. In numerous instances, in connection with the marketing of MasterCard and related “free” items, Defendants have represented, expressly or by implication, that after consumers pay Defendants a fee:
- A. Consumers are guaranteed to receive a MasterCard;
  - B. Consumers will receive, at no charge, additional specified products or services;  
and
  - C. Consumers will receive, at no charge, additional specified products or services that can be used in the manner represented by Defendants; for example, Defendants represent that money is pre-loaded onto the cards and consumers can obtain the money by activating the cards;
32. In truth and in fact, in numerous instances in which Defendants have made the representations above:
- A. Consumers do not receive a MasterCard;
  - B. Consumers do not receive additional specified products or services; or
  - C. Consumers do not receive additional specified products or services that can be used in the manner represented by Defendants; for example, in certain instances, money is not pre-loaded onto the cards and consumers cannot activate the cards.

33. Therefore, the representations set forth in Paragraph 31 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT TWO**

34. In numerous instances, in connection with the marketing of a free trial membership in the Amerikhealth discount health plan, Defendants have misrepresented, directly or by implication, the terms of the cancellation policy for and the negative option features of the plan, including but not limited to:

- A. That the plan is offered on a free-to-pay conversion basis pursuant to which consumers will have a free trial period, such as 15 days, at any time during which they may cancel their plan membership;
- B. That consumers will timely receive the membership card and other information necessary to determine, prior to the expiration of the free trial period, whether they wish to keep or cancel membership in the plan;
- C. That consumers can cancel their plan membership by calling to cancel and obtaining a cancellation number as instructed by Defendants;
- D. That consumers will not be charged for the plan if consumers decline or timely cancel the plan as instructed by Defendants; and
- E. That consumers whose plan memberships are not cancelled will be charged an initial fee and then a fee each month thereafter.

35. In truth and in fact, in numerous instances in which Defendants have made the representations above:

- A. Defendants do not provide a free trial period at any time during which consumers may cancel their plan membership;
  - B. Defendants do not timely send and consumers do not timely receive the membership card and other necessary plan information so that prior to expiration of the free trial period they can determine whether they wish to keep or cancel their plan membership;
  - C. Consumers cannot cancel their plan memberships because Defendants thwart consumers' efforts to call to cancel and obtain a cancellation number as instructed by Defendants;
  - D. Defendants charge consumers for the plan even if they decline the plan or cancel the plan as instructed by Defendants; or
  - E. Consumers whose plan memberships are not cancelled are charged multiple monthly fees in a single month.
36. Therefore, the representations set forth in Paragraph 34 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Unfair Practices**

**COUNT THREE**

37. In numerous instances, in connection with the marketing of a free trial membership in the Amerikhealth discount health plan, Defendants have caused consumers' bank accounts to be electronically debited or credit card accounts to be charged:
- A. After consumers declined Defendants' offer of a free trial membership in the discount health plan;

- B. Prior to receipt by the consumers of the membership card authorizing consumers to use the plan;
  - C. After consumers have asked to cancel the purchase of the plan; or
  - D. After Defendants denied consumers the ability to cancel the plan through the customer service number provided by Defendants.
38. Defendants' practices set forth in Paragraph 37 caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.
39. Therefore, Defendants' practices as alleged in Paragraph 37 constitute unfair practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**THE FTC'S TELEMARKETING SALES RULE**

40. In 1994, 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. On August 16, 1995, the FTC promulgated the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed. Reg. 4580, 4669. Except for specific provisions not relevant to this action, the amended TSR became effective March 31, 2003.
41. Since December 31, 1995, except for certain specified types of transactions, the TSR has exempted from the scope of the TSR telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations. 16 C.F.R. § 310.6(e) (1995). On or after March 31, 2003, the amended TSR modified Section

- 310.6(e) (now renumbered as Section 310.6(b)(5)) to exclude from this exemption any instances of “upselling” included in such telephone calls. 16 C.F.R. § 310.6(b)(5) (2003).
42. Since March 31, 2003, the TSR has defined “upselling” as “soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction.” 16 C.F.R. § 310.2(dd) (2003).
43. Since December 31, 1995, the TSR has provided that it is a deceptive telemarketing act or practice to misrepresent, directly or by implication, in the sale of goods or services any material aspect of the nature or terms of the seller’s refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv) (1995).
44. Since March 31, 2003, the TSR has provided that it is a deceptive telemarketing act or practice to misrepresent, directly or by implication, in the sale of goods or services any material aspect of a negative option feature including, but not limited to, that the customer’s account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s). 16 C.F.R. § 310.3(a)(2)(ix) (2003).
45. Since December 31, 1995, the TSR has prohibited telemarketers and sellers from obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person’s checking, savings, share, or similar account, without that person’s express verifiable authorization. 16 C.F.R. § 310.3(a)(3) (1995).
46. Since March 31, 2003, the TSR has prohibited telemarketers and sellers from causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer. In any telemarketing transaction involving

preacquired account information and a free-to-pay conversion feature, the TSR requires the seller or telemarketer to (a) obtain from the customer, the last four (4) digits of the account number to be charged; (b) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged with the previously acquired account number; and (c) make and maintain an audio recording of the entire telemarketing transaction. In any other telemarketing transaction involving preacquired account information, the TSR requires the seller or telemarketer to (a) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and (b) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the preacquired account information. 16 C.F.R. § 310.4(a)(6) (2003).

47. Since March 31, 2003, the TSR has defined “preacquired account information” as “any information that enables a seller or telemarketer to cause a charge to be placed against a customer’s or donor’s account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.” 16 C.F.R. § 310.2(w) (2003).
48. Since March 31, 2003, the TSR has defined “free-to-pay conversion” as “in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives the product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.” 16 C.F.R. § 310.2(o) (2003).
49. Since December 31, 1995, the TSR has provided that it is a deceptive telemarketing act or practice for a person to provide substantial assistance or support to any seller or



telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a) or 310.4 of the TSR. 16 C.F.R. § 310.3(b) (1995).

50. Defendants are
  - A. “Sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the TSR, 16 C.F.R. §§ 310.2(z), (bb) and (cc); or
  - B. Persons who provide substantial assistance or support to “sellers” or “telemarketers” while knowing or consciously avoiding knowing that the sellers or telemarketers are engaged in acts or practices that violate 16 C.F.R. §§ 310.3(a) or 310.4.
51. 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), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**TSR Violations**

**COUNT FOUR**

52. In numerous instances, in connection with the telemarketing of a free trial membership in the Amerikhealth discount health plan to consumers, in an “upsell” as that term is defined in the TSR, 16 C.F.R. §310.2(dd), Defendants have misrepresented or have assisted and facilitated sellers and telemarketers in misrepresenting, directly or by implication, the terms of the cancellation policy for and the negative option features of the plan, including but not limited to:

- A. That the Amerikhealth discount health plan is offered on a free-to-pay conversion basis pursuant to which consumers will have a free trial period, such as 15 days, at any time during which they may cancel their plan membership;
  - B. That consumers will timely receive the plan membership card and other information necessary to determine, prior to the expiration of the free trial period, whether they wish to keep or cancel their plan membership;
  - C. That consumers can cancel their plan membership by calling to cancel and obtaining a cancellation number as instructed by Defendants;
  - D. That consumers will not be charged for the plan if consumers decline or timely cancel the plan as instructed by Defendants; and
  - E. That consumers whose plan memberships are not cancelled will be charged an initial fee and then a fee each month thereafter.
53. In truth and in fact, in numerous instances in which Defendants have made the representations above:
- A. Consumers are not provided a free trial period at any time during which they may cancel their plan membership;
  - B. Defendants do not timely send and consumers do not timely receive the plan membership card and other necessary plan information so that prior to expiration of the free trial period they can determine whether they wish to keep or cancel their plan membership;
  - C. Consumers cannot cancel their plan memberships because Defendants thwart consumers' efforts to call to cancel and obtain a cancellation number as instructed by Defendants;

D. Defendants charge consumers for the plan even if they decline the plan or cancel the plan as instructed by Defendants; or

E. Consumers whose plan memberships are not cancelled are charged multiple fees in a single month.

54. Defendants have thereby violated Sections 310.3(a)(2)(iv) and (ix) and 310.3(b) of the TSR. 16 C.F.R. §§ 310.3(a)(2)(iv) and (ix) and 310.3(b).

**COUNT FIVE**

55. In numerous instances, in connection with the telemarketing of a free trial membership in the Amerikhealth discount health plan to consumers, in an “upsell” as that term is defined in the TSR, 16 C.F.R. § 310.2(dd), Defendants have caused billing information to be submitted for payment, directly or indirectly, without consumers’ express verifiable authorization or have provided substantial assistance or support to a telemarketer or seller when knowing or consciously avoiding knowing that a telemarketer or seller caused billing information to be submitted for payment, directly or indirectly, without the consumers’ express verifiable authorization.

56. Defendants have thereby violated Sections 310.3(a)(3) and 310.3(b) of the TSR. 16 C.F.R. §§ 310.3(a)(3) and 310.3(b).

**COUNT SIX**

57. In numerous instances, in connection with the telemarketing of a free trial membership in the Amerikhealth discount health plan to consumers, in an “upsell” as that term is defined in th TSR, 16 C.F.R. §310.2(dd), Defendants:

A. Have caused billing information to be submitted for payment, directly or indirectly, without obtaining from consumers the last four (4) digits of the

consumers' account number to be charged or obtaining from consumers their express agreement to be charged for the goods or services and to be charged using the account number for which the last four (4) digits were provided; or

- B. Have provided substantial assistance or support to a telemarketer or seller when knowing or consciously avoiding knowing that a telemarketer or seller caused billing information to be submitted for payment, directly or indirectly, using preacquired account information, without obtaining from consumers the last four (4) digits of consumers' account numbers to be charged or obtaining from consumers their express agreement to be charged for the goods or services and to be charged using the account number for which the last four (4) digits were provided.

58. Defendants have thereby violated Sections 310.4(a)(6)(i)(A) and (B) and 310.3(b) of the TSR. 16 C.F.R. §§ 310.4(a)(6)(i)(A) and (B) and 310.3(b).

**THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

59. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."
60. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that "Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

**EFTA Violation**

**COUNT SEVEN**

61. In numerous instances in connection with the sale of the Amerikhealth discount health plan to consumers, Defendants have debited consumers' bank accounts on a recurring basis without obtaining consumers' written authorization for preauthorized electronic fund transfers from their accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
62. Pursuant to the EFTA, 15 U.S.C. § 1693o(c), every violation of the EFTA and Regulation E constitutes a violation of the FTC Act.
63. By engaging in violations of the EFTA and Regulation E as alleged in Paragraph 58 above, Defendants have violated the FTC Act.

**CONSUMER INJURY**

64. Consumers throughout the United States have suffered and continue to suffer substantial injury as a result of Defendants' unlawful acts or practices. 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.

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

65. 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 the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to, rescission of contracts and restitution, and

the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.

66. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the Telemarketing Sales Rule, including the rescission of contracts and restitution, and disgorgement of ill-gotten gains.

### **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b) and the Court's equitable powers, requests that this Court:

(a) Award plaintiff such temporary and 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 freezing assets;

(b) Permanently enjoin and restrain Defendants from engaging or assisting others in engaging in violations of the FTC Act, the TSR, the EFTA, and Regulation E.

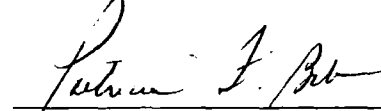
(c) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Sections 5(a) and 19 of the FTC Act, the TSR, the EFTA, and Regulation E, including but not limited to, rescission of contracts and restitution, and disgorgement of ill-gotten gains by Defendants; and

(d) Award Plaintiff the costs of bringing this action and such other equitable relief as the Court may determine to be just and proper.

Dated: June 1 2006

Respectfully submitted,

WILLIAM BLUMENTHAL  
General Counsel



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