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 BY _____
 U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA, PHOENIX DIVISION

| | | |
|--|---|--|
| FEDERAL TRADE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| FIRST AMERICAN PAYMENT |) | |
| PROCESSING, INC.; CHECK PROCESSING |) | COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF |
| CENTER, LLC; CET CORP.; |) | |
| CARL E. TOWNER, and CARL E. TOWNER |) | |
| and JENNIFER SUZANNE TOWNER |) | |
| as husband and wife; MATTHEW ROBINSON, |) | |
| and MATTHEW ROBINSON and JENNIFER |) | |
| ROBINSON as husband and wife, |) | |
| |) | |
| Defendants. |) | |
| |) | |

CIV. No. 04-0074-FMR-RS

Plaintiff Federal Trade Commission ("FTC" or "Commission") for its Complaint alleges:

- 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 et seq., to obtain preliminary and permanent injunctive relief, rescission of contracts, restitution, redress, disgorgement, and other equitable relief for defendants' deceptive and unfair acts or practices in violation of Section 5 of the

FTC Act, 15 U.S.C. § 45, and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"). 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with enforcing 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 practices.
5. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case, including redress, restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant First American Payment Processing, Inc. (“FAPP”) is an Arizona corporation with its principal place of business located in Phoenix, Arizona. FAPP was incorporated in May 2000. Prior to May 2000, defendant Check Processing Center, LLC (“Check Processing”), an Arizona limited liability corporation, and defendant CET Corp., a Florida corporation, did business as “First American Payment Processing.” (FAPP, Check Processing, and CET are collectively referred to hereinafter as the “Corporate Defendants.”) The Corporate Defendants also do or have done business as “CheckGateway.com” and “edebit.net.” The Corporate Defendants transact or have transacted business in the District of Arizona and throughout the United States.
7. The Corporate Defendants operate as an automated clearing house (“ACH”) service bureau or third-party processor of electronic fund transfers. The Corporate Defendants electronically debit funds from consumers’ bank accounts on behalf of merchants, and provide other services that direct, control, assist or facilitate the acts and practices described in the Complaint.
8. Defendant Carl E. Towner is the president, chief executive officer, and an owner of FAPP, and an officer, director, owner, or agent of Check Processing and CET. At all relevant times, acting alone or in concert with others, Carl E. Towner has formulated, directed, controlled, or participated in the acts and practices of the

Corporate Defendants, including the acts and practices set forth in this Complaint. He is a resident of Arizona and transacts or has transacted business in the District of Arizona and throughout the United States.

9. Defendant Jennifer Suzanne Towner is the wife of defendant Carl E. Towner and is named as a relief defendant. At all relevant times Carl E. Towner has acted on behalf of the marital community and Jennifer Suzanne Towner is being named solely for community liability purposes.
10. Defendant Matthew Robinson is the vice president, chief financial officer, and an owner of FAPP, and an officer, director, owner, or agent of Check Processing and CET. At all relevant times, acting alone or in concert with others, Matthew Robinson has formulated, directed, controlled, or participated in the acts and practices of the Corporate Defendants, including the acts and practices set forth in this Complaint. He is a resident of Arizona and transacts or has transacted business in the District of Arizona and throughout the United States.
1. Defendant Jennifer Robinson is the wife of defendant Matthew Robinson and is named as a relief defendant. At all relevant times Matthew Robinson has acted on behalf of the marital community and Jennifer Robinson is being named solely for community liability purposes.

COMMERCE

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

DEFENDANTS’ ACH PROCESSING BUSINESS PRACTICES

The ACH Network and NACHA

13. Since September 1999, defendants have processed transactions through the ACH Network on behalf of merchants, including numerous telemarketers who make unsolicited calls to consumers for the purpose of selling goods and services. The ACH Network is a nationwide electronic funds transfer system that provides for the interbank clearing of electronic payments. Defendants’ clients are the telemarketing companies themselves, with whom defendants enter into a direct contractual agreement to provide ACH processing services.
14. NACHA -- The Electronic Payments Association (“NACHA”) is a not-for-profit trade association that develops and enforces rules for the ACH Network (“NACHA Rules”). The NACHA Rules specifically prohibit, among other things, the processing of one-time, telephone-initiated ACH debits on behalf of merchants engaged in outbound telemarketing to consumers with whom such merchants have no existing relationship. This Rule, known as the “TEL Rule,” was designed to reduce the risk of telemarketing fraud on consumers.

5. To process electronic payments through the ACH Network, defendants have entered into a contract or contracts with one or more financial institutions and third-party ACH processors that participate in the ACH Network, in which defendants have agreed to comply with the NACHA Rules. However, since at least 1999, defendants have knowingly processed ACH payments on behalf of merchants engaged in outbound telemarketing to consumers with whom such merchants have no existing relationship, in direct violation of those contracts and the NACHA Rules.

ACH Processing on Behalf of Deceptive and Abusive Sellers or Telemarketers

16. Since at least 1999, defendants have electronically debited consumers' bank accounts through the ACH Network on behalf of numerous deceptive or abusive telemarketing schemes. Many of those schemes have been based in the Toronto or Montreal areas in Canada.
7. The *modus operandi* for many of defendants' telemarketer clients is substantially similar: Targeting U.S. consumers with poor credit, the telemarketers deceptively induce consumers to authorize an electronic debit of their bank accounts for anywhere from \$149 to \$259 for a purported credit card. Defendants debit the funds from the consumers' bank accounts through the ACH Network, deduct their processing fees from the gross proceeds, and forward the balance of the proceeds from the deceptive scheme to the telemarketers. The consumer victims either

receive nothing, or at best they receive a “benefits package” that contains credit repair information, credit card applications, and other relatively worthless items.

18. Defendants have assisted and facilitated numerous deceptive or abusive telemarketing schemes, including four telemarketers sued by the FTC and two others prosecuted by the State of New York. These deceptive telemarketing schemes include, but are not limited to:
- A. *FTC v. Efficient Telesales Servs., Inc. (U.S. Credit Services)*, No 02-C-3776 (N.D. Ill. filed May 28, 2002);
 - B. *New York v. Telehublink Corp. (Triple Gold Benefits)*, No 2310-1 (N.Y. Sup Ct. filed April 19, 2001);
 - C. *New York v. 3557561 Canada Inc. (Platinum 2000)*, No. 2311-01 (N.Y. Sup. Ct. filed April 19, 2001)
 - D. *FTC v. Pacific First Benefit (First Federal Benefit)*, No. 02-C-8678 (N.D. Ill. filed December 2, 2002);
 - E. *FTC v. Premier Financial Servs. Int’l.*, No. 02-61134 (S.D. Fla. filed August 13, 2002); and
 - F. *FTC v. Sun Spectrum Communications Organization, Inc., North American Communications Organization, Inc. d/b/a Imperial Consumer Services*, No. 03-81105-CIV-COHN/SNOW (S.D. Fla. filed Dec. 2, 2003).

19. In processing ACH transactions on behalf of the parties named in the cases referenced above in Paragraph 18, and on behalf of numerous other deceptive or abusive telemarketers, defendants have caused millions of dollars to be electronically withdrawn from the bank accounts of U.S. consumers.

Efficient Telesales Services Advance-Fee Credit Card Telemarketing Scheme

20. In August 1999, defendants entered into a contract with Efficient Telesales Services and Leonora Khan, d/b/a U.S. Credit Services, an Ontario corporation based in Woodridge, Ontario, to provide ACH processing services. Defendants debited the bank accounts of thousands of U.S. consumers on behalf of Efficient Telesales Services from September 1999, through September 2001, a period of two years.
21. During the time defendants processed ACH transactions for Efficient Telesales Services, defendants knew or consciously avoided knowing that Efficient Telesales Services engaged in outbound telemarketing, and deceptively marketed credit cards to U.S. consumers for an advance fee.
22. On May 28, 2002, the FTC sued Efficient Telesales Services and its principal for violations of the FTC Act and the TSR. *FTC v. Efficient Telesales Servs., Inc.* No. 02-C-3776 (N.D. Ill.). A final order and default judgment was entered against the defendants in that action on February 5, 2003.

Platinum 2000 and Telehublink Advance-Fee Credit Card Telemarketing Schemes

23. On or about December 15, 1999, defendants entered into a contract with Platinum 2000, a Quebec corporation based in Montreal, to provide ACH processing services. From December 1999 through March 2000, defendants debited the bank accounts of thousands of U.S. consumers on behalf of Platinum 2000, as well as a company that became affiliated with Platinum 2000 in January 2000, Telehublink Corp., a Delaware corporation with telemarketing operations in Montreal.
24. During the time defendants processed ACH transactions for Platinum 2000 and Telehublink, defendants knew or consciously avoided knowing that Platinum 2000 and Telehublink engaged in outbound telemarketing, and deceptively marketed credit cards to U.S. consumers for an advance fee.
25. On April 19, 2001, the State of New York sued 3557561 Canada, Inc., d/b/a Platinum 2000, and its principal, and Telehublink and its principal, for violating New York consumer protection laws and the TSR. *New York v. Telehublink Corp.*, No. 2310-1 (N.Y. Sup. Ct.); *New York v. 3557561 Canada Inc., (Platinum 2000)*, No. 2311-01 (N.Y. Sup. Ct.). A final order was entered against the defendants in the *Platinum 2000* case on October 8, 2001. A final order was entered against the defendants in the *Telehublink* case on January 30, 2003.

First Federal Benefit Advance-Fee Credit Card Telemarketing Scheme

26. On January 12, 2000, defendants entered into a contract with First Federal Benefit LLC, a telemarketer based in Toronto, to provide ACH processing services. Defendants debited the bank accounts of thousands of consumers in the U.S. on behalf of First Federal Benefit, from January 2000 through October 2001.
27. During the time defendants processed ACH transactions for First Federal Benefit, defendants knew or consciously avoided knowing that First Federal Benefit engaged in outbound telemarketing, and deceptively marketed credit cards to U.S. consumers for an advance fee.
28. On December 2, 2002, the FTC sued First Federal Benefit, its affiliates, and its principal, for violating the FTC Act and the TSR. *FTC v. Pacific First Benefit (First Federal Benefit)*, No. 02-C-8678 (N.D. Ill. filed December 2, 2002) The court entered a temporary restraining order on December 2, 2002, and a preliminary injunction was entered on December 16, 2002.

Premier Financial Services Advance-Fee Credit Card Telemarketing Scheme

29. On or about August 2000, defendants entered into a contract with Premier Financial Services International, Inc., and/or its affiliates or predecessors, Premier Financial Services of Tennessee, Inc., and First Financial Debt Consolidation, Inc., to provide ACH processing services. Defendants debited the bank accounts of

thousands of U.S. consumers on behalf of Premier Financial for a period of 18 months, from August 2000 to January 2002.

30. During the time defendants processed ACH transactions for Premier Financial, defendants knew or consciously avoided knowing that Premier Financial engaged in outbound telemarketing, and deceptively marketed credit cards to U.S. consumers for an advance fee.
31. On August 13, 2002, the FTC sued Premier Financial and its affiliates and principal for violating the FTC Act and the TSR. *FTC v. Premier Financial Servs. Int'l*, No. 02-61134 (S.D. Fla. filed August 13, 2002). A final order and default judgment was entered against the defendants in that action on December 5, 2002.

Imperial Consumer Services Advance-Fee Credit Card Telemarketing Scheme

32. In November 2002, defendants entered into a contract or arrangement with North American Communications Organization, Inc., doing business as Imperial Consumer Services (“ICS”), to provide ACH processing services. The telemarketing operations for ICS were based in Montreal. Defendants debited the bank accounts of thousands of consumers for ICS beginning in November 2002.
33. During the time defendants processed ACH transactions for ICS, defendants knew or consciously avoided knowing that ICS engaged in outbound telemarketing, and deceptively marketed credit cards to U.S. consumers for an advance fee.

34. On December 2, 2003, the FTC sued ICS and its affiliates and principals for violating the FTC Act and the TSR. *FTC v. Sun Spectrum Communications Organization, Inc., et al.*, No. 03-81105-CIV-COHN/SNOW (S.D. Fla.). The court entered a temporary restraining order against the defendants on December 3, 2003

THE FTC'S TELEMARKETING SALES RULE

35. In the Telemarketing Act, 15 U.S.C. §§ 6101-6108, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the FTC promulgated the TSR. 16 C.F.R. Part 310. The TSR became effective on December 31, 1995. On December 18, 2002, the FTC promulgated amendments to the TSR. The amendments became effective on March 31, 2003
36. The TSR prohibits telemarketers and sellers from "making a false or misleading statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4). Such conduct constitutes a deceptive telemarketing act or practice and a violation of the TSR.
37. The TSR also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a

- loan or other extension of credit. 16 C.F.R. § 310.4(a)(4). Such conduct constitutes an abusive telemarketing act or practice and a violation of the TSR.
38. The TSR also prohibits a person from providing “substantial assistance or support” to any seller or telemarketer when that person “knows or consciously avoids knowing” that the telemarketer is engaged in acts or practices that violate 16 C.F.R. §§ 310.3(a) or 310.4 of the Rule. 16 C.F.R. § 310.3(b). Such conduct constitutes a deceptive telemarketing act or practice and a violation of the TSR.
39. 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).
40. Defendants have processed ACH transactions and provided related services on behalf of persons who are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in Sections 310.2(r), (t), and (u) of the TSR as promulgated in 1995, renumbered but unchanged as Sections 310.2(z), (bb), and (cc) of the TSR as amended in 2003.

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT I

Assisting and Facilitating Telemarketing Sales Rule Violations

41. In numerous instances, in connection with processing ACH transactions and providing related services for sellers or telemarketers, defendants have provided substantial assistance or support to sellers or telemarketers whom defendants knew or consciously avoided knowing:
- A. induced consumers to pay for goods and services through the use of false or misleading statements in violation of Section 310.3(a)(4) of the TSR; or
 - B. falsely represented that after paying an advance fee, consumers are guaranteed or highly likely to receive a credit card or obtain a loan, in violation of Section 310.4(a)(4) of the TSR.
42. Defendants' acts or practices alleged in Paragraph 41 constitute deceptive telemarketing acts or practices in violation of Section 310.3(b) of the TSR and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT II

Unfair Acts or Practices

44. Defendants, in their contracts with one or more financial institutions and third-party ACH processors that have access to the ACH Network, promised that in processing electronic debits to consumers' bank accounts through the ACH Network on behalf of their clients, they would comply with the NACHA Rules, including the NACHA TEL Rule, which was designed to reduce the risk of telemarketing fraud on consumers by prohibiting the processing of one-time, telephone-initiated debits on behalf of merchants who initiate telemarketing calls to consumers with whom such merchants have no existing relationship.
45. In truth and in fact, defendants breached their contracts to abide by the NACHA Rules, by processing one-time, telephone-initiated debits to consumers' bank accounts through the ACH Network on behalf of merchants who initiate telemarketing calls to consumers with whom such merchants have no existing relationship.
46. Defendants' contractual promise to comply with the NACHA Rules, and their subsequent systematic breach of that promise by processing on behalf of outbound telemarketers engaged in deceptive marketing practices caused the debiting of the

bank accounts of a large number of consumers who either never authorized the telemarketers to debit their accounts, or only authorized debits based on the telemarketers' deceptive practices. Adherence to the contractual promise to comply with the TEL Rule would have prevented these results. In addition, these consumers' banks also have incurred substantial economic harm as a result of processing a substantial increase in requests by consumers seeking refunds for unauthorized charges. These increased customer servicing costs in turn get passed on to consumers in the form of higher fees for basic checking account products.

47. Defendants' false contractual promise, and systematic breach of that contractual promise, therefore caused and is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition.
48. Defendants' practices as alleged in Paragraphs 44-47 are unfair practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

49. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

50. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary equitable relief, including consumer redress, disgorgement, and restitution, to prevent and remedy violations of any provision of law enforced by the Commission.
51. 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 TSR, including the rescission and reformation of contracts and the refund of monies.
52. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

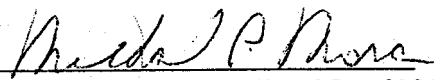
PRAYER FOR RELIEF

53. WHEREFORE, plaintiff, the Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:
 - A. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief;

- B. Permanently enjoin defendants from violating the FTC Act and the Telemarketing Sales Rule, as alleged herein;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. Award plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

Dated: Jan 13th, 2004.

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