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FILED
CLERK, U.S. DISTRICT COURT
MAY - 8 2006
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

BY FAX

13 FEDERAL TRADE COMMISSION,
14 Plaintiff,

Case no. CV06-0849 SJO (OPx)

15 v.

FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

16 UNIVERSAL PREMIUM SERVICES,
17 INC., a California corporation (also
18 known as Premier Benefits, Inc.);
19 CONSUMER REWARD NETWORK,
20 INC., a California corporation; STAR
21 COMMUNICATIONS LLC, a California
22 limited liability company; MEMBERSHIP
23 SERVICES DIRECT, INC., a Nevada
24 corporation (also known as Continuity
25 Partners, Inc.); CONNECT2USA, INC., a
26 Nevada corporation; MERCHANT RISK-
27 MANAGEMENT, INC., a Nevada
28 corporation; PANTEL ONE
CORPORATION, a Nevada Corporation;
ALL STAR ACCESS, INC.; a Colorado
Corporation; PRIME TIME VENTURES,
INC., a Nevada Corporation; BRIAN K.
MACGREGOR; HARIJINDER SIDHU;
JOSEPH F. LAROSA, JR.; PRANOT
SANGPRASIT; WILLIAM THOMAS
HEICHERT; MICHAEL HOWARD
CUSHING; PAUL P. TOSI; MANH D.
CAO; MIDWEST PROPERTIES, INC.;
and CHRISTINE MACGREGOR,

LOGGED
MAY - 11 2006 B. J. B.
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY [Signature] DEPUTY

Defendants.

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1 Plaintiff Federal Trade Commission (“FTC” or “Commission”) for its first
2 amended complaint alleges:

3 1. The FTC brings this action against Defendants Universal Premium
4 Services, Inc., Consumer Reward Network, Inc., Star Communications LLC,
5 Membership Services Direct, Inc., Connect2USA, Inc., Merchant Risk Management,
6 Inc., Pantel One Corporation, All Star Access, Inc., Prime Time Ventures, Inc., Brian
7 K. Macgregor, Harijinder Sidhu, Joseph F. LaRosa, Jr., Pranot Sangprasit, William
8 Thomas Heichert, Michael Howard Cushing, Paul P. Tosi, and Manh D. Cao
9 (collectively, the “Defendants”) under Sections 13(b) and 19 of the Federal Trade
10 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing
11 and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C.
12 §§ 6101-6108, to obtain preliminary and permanent injunctive relief, rescission of
13 contracts, restitution, disgorgement, and other equitable relief for Defendants’
14 deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15
15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part
16 310.

17 2. The FTC brings this action against Defendants Midwest Properties, Inc.
18 and Christine MacGregor (collectively, the “Fraudulent Transfer Defendants”) under
19 the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 *et seq.*, to avoid
20 fraudulent transfers of assets including real property from Defendant Brian
21 MacGregor to the Fraudulent Transfer Defendants. The avoidance of these transfers
22 is necessary in the interests of justice to secure funds for redress or disgorgement.

23 JURISDICTION AND VENUE

24 3. This Court has subject matter jurisdiction pursuant to 15 U.S.C.
25 §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), 1345,
26 and §§ 3001 *et seq.*

27 4. Venue is proper in this district under 15 U.S.C. §§ 53(b) and 28 U.S.C.
28 § 1391(b), and (c).

1
2 PLAINTIFF

3 5. Plaintiff **Federal Trade Commission** is an independent agency of the
4 United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The
5 Commission is charged with, *inter alia*, enforcing Section 5(a) of the FTC Act, 15
6 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting
7 commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15
8 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and
9 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
10 telemarketing acts or practices.

11 6. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to
12 initiate federal district court proceedings, in its own name by its designated attorneys,
13 to enjoin violations of any provision of law enforced by the FTC, and to secure such
14 equitable relief as may be appropriate in each case, including rescission of contracts,
15 restitution, and disgorgement, 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

16 DEFENDANTS

17 7. Defendant **Universal Premium Services, Inc.** (also known as Premier
18 Benefits, Inc.) is a California corporation that does business as Premier Benefits,
19 Buyer's Union, Premier Movie Pass, and Call-One Unlimited Communications
20 ("Premier Benefits"). It transacts or has transacted business through the following
21 mail drop addresses: 333 City Blvd., 17th Floor, Orange, CA 92868, 1442 East
22 Lincoln Ave., Suite 361, Orange, CA 92865, and P.O. Box 4172, Woodland Hills,
23 CA 91365-4172. It has also transacted business at 22130 Clarendon Street,
24 Woodland Hills, CA 91367. Defendant Premier Benefits transacts or has transacted
25 business within the Central District of California.

26 8. Defendant **Consumer Reward Network, Inc.** is a California
27 corporation that does business as Star Communications, Consumer Health Reward
28 Network, Health Network Unlimited, AutoGold, Net4Ever, Family Fun Pass, Mega
Movie Pass, and Half Price TV ("Consumer Reward Network"). It transacts or has

1 transacted business through the following mail drop addresses: P.O. Box 4172,
2 Woodland Hills, CA 91365-4172, 22647 Ventura Blvd., #1023, Woodland Hills, CA
3 91364-1416, 6320 Canoga Ave., Suite 1500, Woodland Hills, CA 91367 and 6433
4 Topanga Canyon Blvd., P.O. Box 801, Canoga Park, CA 91303. It has also
5 transacted business at 22130 Clarendon Street, Woodland Hills, CA 91367.
6 Defendant Consumer Reward Network transacts or has transacted business within
7 the Central District of California.

8 9. Defendant **Star Communications LLC** is a California limited liability
9 company that does business as Star Communications, Family Fun Card, and Half
10 Price TV (“Star Communications”). It transacts or has transacted business through
11 the following mail drop addresses: 1800 Century Park East, Suite 600, Los Angeles,
12 CA 90067 and 6433 Topanga Canyon Blvd., P.O. Box 402, Canoga Park, CA 91303.
13 It has also transacted business at 22130 Clarendon Street, Woodland Hills, CA
14 91367. Defendant Star Communications transacts or has transacted business within
15 the Central District of California.

16 10. Defendant **Membership Services Direct, Inc.** (also known as
17 Continuity Partners, Inc.) is a Nevada corporation that does business as Continuity
18 Partners, American Values, WellNet America, Washballs, and Utalk Unlimited
19 (“Continuity Partners”). It maintains its principal place of business at 4699 Industrial
20 Road, #206, Las Vegas, NV 89103, conducts business out of the Malibu, California,
21 home of its principal Brian MacGregor, and receives mail at P.O. Box 18434, Las
22 Vegas, 89114. Defendant Continuity Partners has transacted business within the
23 Central District of California in connection with the acts and practices described in
24 this complaint.

25 11. Defendant **Connect2USA, Inc.** is a Nevada corporation. Its principal
26 place of business is 3800 Howard Hughes Parkway, Suite 500, Las Vegas, NV
27 89109. It also conducts business at 22130 Clarendon Street, Woodland Hills, CA
28 91367. At times material to this complaint, Connect2USA has provided

1 telemarketing, account, fulfillment, customer service, and other management services
2 for the other corporate Defendants, and directs, controls, assists, or facilitates the acts
3 and practices described in this complaint. It transacts or has transacted business
4 within the Central District of California.

5 12. Defendant **Merchant Risk Management, Inc.** (“Merchant Risk
6 Management”) is a Nevada corporation. Its principal place of business is 3800
7 Howard Hughes Parkway, Suite 500, Las Vegas, NV 89109. Beginning in January
8 2006, Merchant Risk Management has provided telemarketing, account, fulfillment,
9 customer service, and other management services for the other corporate Defendants,
10 and directs, controls, assists, or facilitates the acts and practices described in this
11 complaint. It transacts or has transacted business within the Central District of
12 California.

13 13. Defendant **Pantel One Corporation** is a Nevada corporation. Its
14 principal place of business is 4340 S. Valley View Blvd., Suite 224, Las Vegas, NV
15 89103. Beginning in January 2006, Pantel One Corporation has provided
16 telemarketing services and customer service functions for the other corporate
17 Defendants, and directs, controls, assists, or facilitates the acts and practices
18 described in this complaint. Defendant Pantel One Corporation transacts or has
19 transacted business within the Central District of California.

20 14. Defendant **All Star Access, Inc.** is a Colorado corporation that does
21 business as Movies Unlimited, Net Saver, and Deluxe Holidays (“All Star Access”).
22 It transacts or has transacted business through the following mail drop address: 700
23 N. Colorado Blvd., #338, Denver, CO 80206. It also transacts business at 3800
24 Howard Hughes Parkway, Suite 500, Las Vegas, NV 89109. Defendant All Star
25 Access transacts or has transacted business within the Central District of California.

26 15. Defendant **Prime Time Ventures, Inc.** is a Nevada corporation that
27 does business as That’s Entertainment, VIP Holidays, Healthcare Plus, and
28 Protection Plus (“Prime Time Ventures”). It transacts or has transacted business

1 through the following mail drop address: 1117 Desert Lane, # 182, Las Vegas, NV
2 89102. It also transacts business at 3800 Howard Hughes Parkway, Suite 500, Las
3 Vegas, NV 89109. Defendant Prime Time Ventures transacts or has transacted
4 business within the Central District of California.

5 16. Defendant **Brian K. MacGregor** is the President, Secretary, Treasurer,
6 and owner of Continuity Partners and Merchant Risk Management. He resides in,
7 among other places, the Central District of California and transacts business there.
8 At all times material to this complaint, he has formulated, directed, controlled,
9 participated in, assisted in, or facilitated the acts or practices set forth in this
10 complaint.

11 17. Defendant **Harjinder Sidhu** is the President, Secretary, and Treasurer
12 of Connect2USA. He has also served as President of Consumer Reward Network.
13 He resides and transacts business in the Central District of California. At times
14 material to this complaint, he has formulated, directed, controlled, participated in,
15 assisted in, or facilitated the acts or practices set forth in this complaint.

16 18. Defendant **Joseph F. LaRosa, Jr.** is the General Manager of
17 Connect2USA and Merchant Risk Management. He resides in Las Vegas, Nevada.
18 He transacts business in the Central District of California. At all times material to
19 this complaint, he has formulated, directed, controlled, participated in, assisted in, or
20 facilitated the acts or practices set forth in this complaint.

21 19. Defendant **Pranot Sangpravit** is President, Secretary, and Treasurer of
22 Premier Benefits and All Star Access. He resides in, among other places, the Central
23 District of California and transacts business there. At times material to this
24 complaint, he has formulated, directed, controlled, participated in, assisted in, or
25 facilitated the acts or practices set forth in this complaint.

26 20. Defendant **William Thomas Heichert** is or has served as President of
27 Consumer Reward Network. He resides in Las Vegas, Nevada. He transacts
28 business in the Central District of California. At times material to this complaint, he

1 has formulated, directed, controlled, participated in, assisted in, or facilitated the acts
2 or practices set forth in this complaint.

3 21. Defendant **Michael Howard Cushing** is or has served as President,
4 Secretary, and Treasurer of Consumer Reward Network. He resides and transacts
5 business in the Central District of California. At times material to this complaint, he
6 has formulated, directed, controlled, participated in, assisted in, or facilitated the acts
7 or practices set forth in this complaint.

8 22. Defendant **Paul P. Tosi** is or has served as President, Secretary, and
9 Treasurer of Consumer Reward Network. He also is or has served as President,
10 Secretary, and Treasurer of Pantel One Corporation. He resides in Las Vegas,
11 Nevada. He transacts business in the Central District of California. At times
12 material to this complaint, he has formulated, directed, controlled, participated in,
13 assisted in, or facilitated the acts or practices set forth in this complaint.

14 23. Defendant **Manh D. Cao** is President, Secretary, and Treasurer of Star
15 Communications. He resides and transacts business in the Central District of
16 California. At times material to this complaint, he has formulated, directed,
17 controlled, participated in, assisted in, or facilitated the acts or practices set forth in
18 this complaint.

19 FRAUDULENT TRANSFER DEFENDANTS

20 24. Fraudulent Transfer Defendant **Midwest Properties, Inc.** is a California
21 corporation owned and controlled by Defendant Brian MacGregor and his wife,
22 Fraudulent Transfer Defendant Christine MacGregor. Midwest Properties, Inc.
23 transacts or has transacted business within the Central District of California.
24 Midwest Properties, Inc. receives or has received substantial assets, including real
25 property, from Defendant Brian MacGregor, either directly or through Fraudulent
26 Transfer Defendant Christine MacGregor.

27 25. Fraudulent Transfer Defendant **Christine MacGregor** is the wife of
28 Defendant Brian MacGregor. She is the nominal owner of Fraudulent Transfer

1 Defendant Midwest Properties, Inc. Fraudulent Transfer Defendant Christine
2 MacGregor receives or has received assets, including real property, from Defendant
3 Brian MacGregor, either directly or through Fraudulent Transfer Defendant Midwest
4 Properties, Inc. She resides in the Central District of California and transacts
5 business there.

6 COMMERCE

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

10 DEFENDANTS’ UNLAWFUL BUSINESS PRACTICES

11 27. Since at least 2004, Defendants, individually and in concert, and
12 through the mutual assistance of one another, have engaged in a nationwide scheme
13 to take money from the bank accounts of consumers across the United States through
14 deception or without their valid consent. Defendants have engaged in this scheme
15 through the purported marketing and sale of various goods and services, including
16 discount membership programs and calling cards.

17 28. Defendants have carried out their scam through at least nine entities --
18 Premier Benefits, Consumer Reward Network, Star Communications, Continuity
19 Partners, All Star Access, Prime Time Ventures, Connect2USA, Merchant Risk
20 Management, and Pantel One Corporation -- as follows:

21 Defendants’ Deceptive and Abusive Telemarketing Sales Calls

22 29. Defendants’ telemarketers, representing Premier Benefits, Consumer
23 Reward Network, Star Communications, Continuity Partners, All Star Access, or
24 Prime Time Ventures, call consumers offering them a “free” item such as a gift card,
25 “shopping spree,” gas voucher, or movie passes, often represented to be valued at
26 \$200 or more, for which they are asked to pay nominal shipping and handling costs
27 (typically \$3.95 or \$4.95). In numerous instances, the telemarketers tell the
28

1 consumers that they represent the federal government, gasoline companies, or well-
2 known retailers such as Wal-Mart or Home Depot.

3 30. In numerous instances when the consumer declines the telemarketer's
4 offer, the telemarketer calls back repeatedly until the consumer agrees to listen to the
5 sales pitch.

6 31. In numerous instances when the consumer declines the telemarketer's
7 offer and tells the telemarketer that he does not wish to receive any additional
8 telephone calls made by or on behalf of the seller whose goods or services are being
9 offered, the telemarketer calls back repeatedly until the consumer agrees to listen to
10 the sales pitch.

11 32. Defendants' telemarketers use various ruses to get consumers to
12 disclose their bank routing and account numbers. Many consumers are told that in
13 order to receive the free item, they need to supply their bank routing and account
14 numbers so that the nominal shipping and handling charges can be paid. In other
15 instances, Defendants' telemarketers claim they need the information to make sure
16 the consumer has sufficient funds or to "confirm" the consumer's contact and
17 account information that the telemarketer already has.

18 33. It is only after Defendants' telemarketers obtain the consumer's bank
19 routing and account numbers that many consumers learn that the call is for more than
20 the free item. At this point, the telemarketers play a recording which asks the
21 consumer to orally verify that he is authorizing debits to his bank account for trial
22 memberships in various "discount" membership programs (the "verification process"
23 or "verification recording"). It is during the verification process that many
24 consumers first hear about the membership programs for which they will be charged
25 substantial membership fees and set-up fees.

26 34. Defendants' telemarketers take unlawful measures to obtain purported
27 authorization from consumers to debit their bank accounts. In numerous instances,
28 the telemarketer misleads the consumer in order to obtain affirmative responses

1 (“yes” or “okay”) for the verification recording. Examples of misrepresentations
2 made by Defendants’ telemarketers to induce the consumer to say “yes” or “okay”
3 during the verification process include:

- 4 a. the consumer should not worry about the charges mentioned in the
5 recording because those charges do not pertain to the consumer;
- 6 b. the consumer’s bank account will not be debited during the trial period;
7 and
- 8 c. the consumer may easily cancel the membership during the trial period.

9 35. In some instances, the telemarketers engage in abusive tactics, including
10 threats and insults, to compel the consumer to give purported oral authorization to
11 debit his account for each of the membership programs. Examples of threats that
12 have been made by Defendants’ telemarketers to consumers include:

- 13 a. the consumer will be subject to an additional, substantial charge if the
14 verification process is not completed;
- 15 b. the telemarketer cannot guarantee that consumer’s banking information
16 is safe from charges if the verification process is not completed; and
- 17 c. the consumer’s banking information will be made available to the public
18 on the Internet unless the verification process is completed.

19 36. In numerous instances when the consumer does not say “yes” when
20 instructed by the telemarketer during the verification process, the telemarketer
21 interrupts the recording, sometimes repeatedly, and tells the consumer he must
22 answer “yes” to every question or the whole verification process will start over
23 again.

24 37. In some instances when the consumer terminates the call before the
25 telemarketer can obtain a recorded verification with “yes” responses, the
26 telemarketer calls back, sometimes repeatedly, threatening or verbally harassing the
27 consumer in an attempt to obtain purported authorization to debit the consumer’s
28 account.

1 38. In some instances when the consumer has stated to the telemarketer that
2 he does not wish to receive any additional telephone calls made by or on behalf of
3 the seller whose goods or services are being offered and terminates the call before
4 the telemarketer can obtain a recorded verification with “yes” responses, the
5 telemarketer calls back, sometimes repeatedly, threatening or verbally harassing the
6 consumer in an attempt to obtain purported authorization to debit the consumer’s
7 account.

8 Defendants Fail to Deliver What They Promised to Consumers

9 39. Defendants do not send consumers the free item that Defendants’
10 telemarketers promise the consumers in the telemarketing sales calls.

11 Defendants’ Offensive Cancellation and Refund Practices

12 40. Defendants’ telemarketers and “customer service” representatives
13 routinely make it difficult or impossible for the consumers to cancel their trial
14 discount membership club memberships or to obtain a refund. Some examples of
15 Defendants’ telemarketers’ tactics to prevent or hinder cancellations and refund
16 requests include

- 17 a. giving a consumer an incorrect phone number for cancellations;
- 18 b. telling a consumer that his order is not “in the system yet” and that he
19 must call back after a certain number of days;
- 20 c. telling a consumer that he will be mailed a refund authorization form,
21 which comes only after significant delays and follow-up inquiries from
22 the consumer;
- 23 d. telling consumers repeatedly over a period of several months that their
24 refund is “processing”; and
- 25 e. giving various excuses for delays in the processing of refunds including
26 that the company’s computers are “down,” that the customer service
27 representative is experiencing “technical difficulties,” that the company
28 is “investigating” the refund request, and that the check is “in the mail.”

1 41. In numerous instances, Defendants' customer service representatives
2 have also told consumers that the company never offered any free item in the
3 telemarketing calls.

4 42. In numerous instances, the consumers discover they have been charged
5 fees before the end of the stated trial periods. Defendants also continue debiting
6 money from some consumers' bank accounts even after the consumers have
7 instructed Defendants' customer service representatives to cancel their memberships.

8 Defendant Brian MacGregor's Fraudulent Transfers

9 43. Beginning in 2003, Defendant Brian MacGregor has transferred to the
10 Fraudulent Transfer Defendants his legal interest in numerous valuable assets,
11 including real property located at:

- 12 a. 5805 Foxview Drive, Malibu, CA 90265-2684 (APN: 4470-004-023)
13 (September 2003);
14 b. Undeveloped land, Malibu, CA (APN: 4470-004-024) (September
15 2003);
16 c. **ID#1** (December 2003);¹
17 d. 31610 Broad Beach Road, Malibu, CA 90265-2617 (APN: 4470-023-
18 047) (February 2003);
19 e. 28981 Cliffside Drive, Malibu, CA 90265 (APN: 4466-010-001)
20 (September 2005);
21 f. 745 Bridges Lane, Mammoth Lakes, CA 93546 (January 2004);
22 g. 775 Bridges Lane, Mammoth Lakes, CA 93546 (March 2004).

23 44. Beginning in 2003, Defendant Brian MacGregor has assumed sole
24 liability for certain monetary obligations for which he and Fraudulent Transfer
25 Defendant Christine MacGregor were jointly liable.

26 _____
27 ¹ This address has been redacted pursuant to Local Rule 79-5.4. The
28 unique identifier ID#1 refers to personal identifiers listed in the "Personal Data
Identifiers Reference List," filed under permanent seal on February 14, 2006.

1 45. These transferred assets and obligations (the “Fraudulent Transfers”)
2 were purportedly made pursuant to a “Post Marital Agreement” entered into between
3 Defendants Brian MacGregor and Christine MacGregor dated July 1, 2003.

4 46. The Fraudulent Transfers were made:

- 5 a. with an actual intent to hinder, delay, or defraud a creditor, or
- 6 b. without receiving a reasonably equivalent value in exchange for the
7 transfer or obligation, and
 - 8 i. Brian MacGregor was engaged or was about to engage in a
9 business or a transaction for which his remaining assets were
10 unreasonably small in relation to the business or transaction; or
 - 11 ii. Brian MacGregor intended to incur, or believed or reasonably
12 should have believed that he would incur, debts beyond his ability
13 to pay as they became due.

14 VIOLATIONS OF SECTION 5 OF THE FTC ACT

15 47. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive and
16 unfair acts and practices in or affecting commerce. Misrepresentations or omissions
17 of material fact constitute deceptive acts or practices pursuant to Section 5(a) of the
18 FTC Act.

19 Count 1: Misrepresentations

20 48. In numerous instances, Defendants make material misrepresentations,
21 directly or by implication, to consumers in the course of telemarketing membership
22 programs, including that:

- 23 a. Defendants will send the consumers a free item if the consumers pay a
24 shipping and handling fee;
- 25 b. Defendants provide a free trial period during which time the consumers
26 will not be charged fees;
- 27 c. Defendants provide a cancellation period during which time the
28 consumers may obtain a refund for fees already paid;

1 d. consumers may cancel their memberships in Defendants' programs at
2 any time; and

3 e. Defendants are affiliated with or endorsed or sponsored by a person or
4 government entity.

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

7 a. Defendants fail to send to consumers who have paid the shipping and
8 handling fee a free item;

9 b. Defendants debit fees from consumers' bank accounts before the free
10 trial period has expired;

11 c. Defendants do not provide refunds to consumers who cancel within the
12 stated cancellation period for fees already paid;

13 d. Defendants do not allow consumers to cancel their memberships in
14 Defendants' programs at any time; and

15 e. Defendants are not affiliated with or endorsed or sponsored by the
16 person or government entity with whom they claim affiliation,
17 endorsement, or sponsorship.

18 50. Therefore, Defendants' representations as set forth in Paragraph 48 are
19 false and misleading and constitute deceptive acts or practices in violation of Section
20 5(a) of the FTC Act, 15 U.S.C. § 45(a).

21 THE FTC'S TELEMARKETING SALES RULE

22 51. The Commission promulgated the Telemarketing Sales Rule, 16 C.F.R.
23 Part 310, pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a).
24 The Rule became effective on December 31, 1995, and was amended in 2003.

25 52. Section 310.3(a) of the Telemarketing Sales Rule prohibits
26 telemarketers and sellers from, *inter alia*:

- 1 a. misrepresenting any material aspect of the nature or terms of the seller's
2 refund, cancellation, exchange, or repurchase policies (16 C.F.R.
3 § 310.3(a)(2)(iv)); and
4 b. misrepresenting a seller's or telemarketer's affiliation with, or
5 endorsement or sponsorship by, any person or government entity (16
6 C.F.R. § 310.3(a)(2)(vii)).

7 53. Section 310.4(a) of the Telemarketing Sales Rule prohibits
8 telemarketers and sellers from engaging in abusive telemarketing acts and practices,
9 which are defined to include, *inter alia*:

- 10 a. use of threats, intimidation, or the use of profane or obscene language
11 (16 C.F.R. § 310.4(a)(1)); and
12 b. causing billing information to be submitted for payment without the
13 express informed consent of the customer (16 C.F.R. § 310.4(a)(6)).

14 54. Section 310.4(b) of the Telemarketing Sales Rule prohibits
15 telemarketers from engaging in, or sellers from causing a telemarketer to engage in
16 certain conduct, including, *inter alia*, initiating any outbound telephone call to a
17 person when that person previously has stated that he or she does not wish to receive
18 an outbound telephone call made by or on behalf of the seller whose goods or
19 services are being offered (16 C.F.R. § 310.4(b)(1)(iii)(A)).

20 55. The Telemarketing Sales Rule prohibits any person from providing
21 substantial assistance or support to any seller or telemarketer when that person
22 knows or consciously avoids knowing that the seller or telemarketer is engaged in
23 any act or practice that violates Telemarketing Sales Rule Sections 310.3(a), (c), or
24 (d) or 310.4, 16 C.F.R. §§ 310.(a), (c), (d) and 310.4 (16 C.F.R. § 310.3(b)).

25 56. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c),
26 and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the
27 Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or
28 affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 57. Defendants are:

- 2 a. "sellers" or "telemarketers" engaged in "telemarketing," as those terms
3 are defined in the amended Telemarketing Sales Rule (16 C.F.R.
4 §§ 310.2(z), (bb), and (cc)); or
5 b. persons who provide substantial assistance or support to "sellers" or
6 "telemarketers" when that person knows or consciously avoids knowing
7 that the sellers or telemarketers are engaged in acts or practices that
8 violate Telemarketing Sales Rule Sections 310.3(a) or 310.4, 16 C.F.R.
9 §§ 310.3(a) and 310.4 (16 C.F.R. § 310.3(b)).

10 DEFENDANTS' TELEMARKETING SALES RULE VIOLATIONS

11 Count 2: Misrepresentations about Defendants'

12 Refund and Cancellation Policies

13 58. In numerous instances, in connection with the telemarketing of various
14 goods or services, Defendants misrepresent, directly or by implication, a material
15 aspect of the nature or terms of their refund and cancellation policies, including, but
16 not limited to

- 17 a. that Defendants provide a free trial period during which time the
18 consumers will not be charged fees;
19 b. that Defendants provide a cancellation period during which time the
20 consumers may obtain a refund for fees already paid; and
21 c. that consumers may cancel their memberships in Defendants' programs
22 at any time,

23 thereby violating Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

24 Count 3: Misrepresentations About Defendants'

25 Affiliations or Endorsements

26 59. In numerous instances, in connection with the telemarketing of various
27 goods or services, Defendants misrepresent, directly or by implication, their
28 affiliation with, or endorsement or sponsorship by, a person or government entity

1 (including, but not limited to, the federal government or an agency thereof or a major
2 retailer), thereby violating Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R.

3 § 310.3(a)(2)(vii).

4 Count 4: Causing Billing Information to Be Submitted For Payment Without
5 Customer's Express Informed Consent

6 60. In numerous instances, in connection with the telemarketing of various
7 goods or services, Defendants cause billing information to be submitted, directly or
8 indirectly, without the express informed consent of the customer, thereby violating
9 Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6).

10 Count 5: Defendants' Use of Threats and
11 Intimidation in Telemarketing Calls

12 61. In numerous instances, in connection with the telemarketing of various
13 goods or services, Defendants engage in threats, intimidation, or the use of profane
14 or obscene language, thereby violating Section 310.4(a)(1) of the TSR, 16 C.F.R.
15 § 310.4(a)(1).

16 Count 6: Ignoring Consumers' Entity-Specific Do Not Call Requests

17 62. In numerous instances, in connection with the telemarketing of various
18 goods or services, Defendants initiate or cause a telemarketer to initiate an outbound
19 telephone call to a person when that person previously has stated that he or she does
20 not wish to receive an outbound telephone call made by or on behalf of the seller
21 whose goods or services are being offered, thereby violating Section
22 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

23 Count 7: Assisting and Facilitating Violations of the TSR

24 63. In numerous instances, in connection with the telemarketing of various
25 goods or services, Defendants provide substantial assistance or support to a
26 telemarketer or seller when knowing or consciously avoiding knowing that the
27 telemarketer or seller is engaged in an act or practice that violates Sections 310.3(a),
28

1 (c), or (d), or Section 310.4 of the TSR, thereby violating Section 310.3(b) of the
2 TSR, 16 C.F.R. § 310.3(b).

3 VIOLATIONS OF THE FEDERAL DEBT COLLECTION PROCEDURES ACT

4 Count 8: Fraudulent Transfers

5 64. Under the Federal Debt Collection Procedures Act, Plaintiff Federal
6 Trade Commission may obtain prejudgment remedies to set aside a fraudulent
7 transfer in connection with a claim for a debt, including damages or restitution.
8 28 U.S.C. § 3101(b)(1)(B) and (C).

9 65. Defendant Brian MacGregor has transferred assets, including real
10 property, to one or more of the Fraudulent Transfer Defendants, and has transferred
11 the liability on monetary obligations of one or more of the Fraudulent Transfer
12 Defendants to himself.

13 66. These transfers were made:

- 14 a. with actual intent to hinder, delay, or defraud a creditor, in violation of
15 Section § 3304(b)(1)(A) of the Federal Debt Collection Procedures Act;
16 or
17 b. without receiving a reasonably equivalent value in exchange for the
18 transfer and (i) Brian MacGregor was engaged or was about to engage
19 in a business or a transaction for which his remaining assets were
20 unreasonably small in relation to the business or transaction; or (ii)
21 Brian MacGregor intended to incur, or believed or reasonably should
22 have believed that he would incur, debts beyond his ability to pay as
23 they became due, in violation of Section § 3304(b)(1)(B) of the Federal
24 Debt Collection Procedures Act.

25 CONSUMER INJURY

26 67. Consumers throughout the United States have suffered, and continue to
27 suffer, substantial monetary loss as a result of Defendants' unlawful acts or practices.
28 In addition, Defendants have been unjustly enriched as a result of their unlawful

1 practices. Absent injunctive relief by this Court, Defendants are likely to continue to
2 injure consumers, reap unjust enrichment, and harm the public interest.

3 THE COURT'S POWER TO GRANT RELIEF

4 68. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
5 to grant injunctive and other ancillary equitable relief, including rescission of
6 contracts, disgorgement, and restitution, to prevent and remedy violations of any
7 provision of law enforced by the Commission.

8 69. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
9 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
10 the Court finds necessary to redress injury to consumers or other persons resulting
11 from Defendants' violations of the Telemarketing Sales Rule, including the
12 rescission and reformation of contracts and the refund of monies.

13 70. The Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 *et seq.*,
14 authorizes this Court to set aside fraudulent transfers in connection with this action.

15 71. This Court, in the exercise of its equitable jurisdiction, may award other
16 ancillary relief to remedy injury caused by Defendants' law violations.

17 PRAYER FOR RELIEF

18 72. Wherefore, Plaintiff, the Federal Trade Commission, pursuant to
19 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of
20 the Telemarketing Act, 15 U.S.C. § 6105(b), the Federal Debt Collection Procedures
21 Act, 28 U.S.C. §§ 3001-3308, and the Court's own equitable powers, requests that
22 the Court:

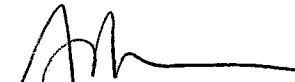
- 23 a. award Plaintiff such preliminary injunctive and ancillary relief as may
24 be necessary to avert the likelihood of consumer injury during the
25 pendency of this action, and to preserve the possibility of effective final
26 relief;
- 27 b. permanently enjoin Defendants from violating the FTC Act and the
28 Telemarketing Sales Rule, as alleged herein;

- 1 c. award such relief as the Court finds necessary to redress injury to
2 consumers resulting from Defendants' violations of the FTC Act and the
3 Telemarketing Sales Rule, including, but not limited to, rescission of
4 contracts, the refund of monies paid, and the disgorgement of ill-gotten
5 monies;
- 6 d. award such relief against Fraudulent Transfer Defendants Midwest
7 Properties, Inc. and Christine MacGregor as the Court finds necessary to
8 secure funds for redress or disgorgement, including an order setting
9 aside Defendant Brian MacGregor's transfers of his interest in assets,
10 including real property, to the Fraudulent Transfer Defendants; and
- 11 e. award Plaintiff the costs of bringing this action, as well as such other
12 and additional equitable relief as the Court may determine to be just and
13 proper.
- 14

15 Dated: May 1, 2006

Respectfully submitted,

16 WILLIAM BLUMENTHAL
17 General Counsel

18 

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20 JENNIFER M. BRENNAN
21 Federal Trade Commission
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23 Los Angeles, CA 90024
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25 Facsimile: (310) 824-4380

26 Attorneys for Plaintiff
27
28

1 **CERTIFICATE OF SERVICE**

2 I, Faye Chen Barnouw, certify as follows:

3 I am over the age of 18 and am an attorney for the Federal Trade Commission.

4 My business address is 10877 Wilshire Boulevard, Suite 700, Los Angeles,
5 California 90024. On May 1, 2006, I caused the attached document entitled "First
6 Amended Complaint for Permanent Injunction and Other Equitable Relief" to be
7 served to:

8 Tom Brown
9 Brown & White LLP
10 333 S. Hope Street, 36th Floor
11 Los Angeles, CA 90071
12 e-mail: tbrown@brownwhitelaw.com

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MacGregor and Membership Services
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Inc.)

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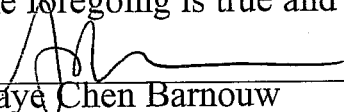
By FedEx overnight delivery

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By FedEx overnight delivery

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 1, 2006



Faye Chen Barnouw