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7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 FEDERAL TRADE COMMISSION,

Civil No.

11 Plaintiff,

12 v.

13 COMPLAINT FOR
14 INJUNCTIVE AND OTHER
15 EQUITABLE RELIEF

13 ADVANCED MANAGEMENT
14 SERVICES NW LLC, also d.b.a. AMS
15 Financial, Rapid Reduction Systems, and
16 Client Services Group, a Washington
17 limited liability company;

16 PDM INTERNATIONAL, INC., also d.b.a.
17 Priority Direct Marketing International,
18 Inc., a Delaware corporation;

18 RAPID REDUCTION SYSTEM'S, LLC, a
19 Delaware limited liability company;

19 Ryan David Bishop;

20 Michael L. Rohlf; and

21 William D. Fithian,

22 Defendants.
23

24 Plaintiff, the Federal Trade Commission ("FTC"), for its complaint, alleges:

25 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
26 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
27 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing
28

1 Act”), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent
2 injunctive relief, rescission or reformation of contracts, restitution, the refund of
3 monies paid, disgorgement of ill-gotten monies, and other equitable relief for
4 defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
5 § 45(a), and in violation of the FTC’s Telemarketing Sales Rule (“TSR”),
6 16 C.F.R. Part 310, in connection with the marketing and sale of a credit card
7 interest rate reduction service.

8 JURISDICTION AND VENUE

9 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
10 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and
11 6105(b).

12 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and
13 15 U.S.C. § 53(b).

14 PLAINTIFF

15 4. Plaintiff FTC is an independent agency of the United States
16 Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section
17 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or
18 practices in or affecting commerce. The FTC also enforces the Telemarketing Act,
19 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated
20 and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
21 telemarketing acts or practices.

22 5. The FTC is authorized to initiate federal district court proceedings, by
23 its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure
24 such equitable relief as may be appropriate in each case, including rescission or
25 reformation of contracts, restitution, the refund of monies paid, and the
26 disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B),
27 57b, 6102(c), and 6105(b).

DEFENDANTS

1
2 5. Defendant Advanced Management Services NW LLC, also doing
3 business as AMS Financial, Rapid Reduction Systems, and Client Services Group
4 (“AMS”), is a Washington limited liability company with its mailing address and
5 principal place of business at 1312 N. Monroe, Suite 500, Spokane, Washington
6 99201. AMS transacts or has transacted business in this district and throughout the
7 United States.

8 6. Defendant Rapid Reduction System’s, LLC (“Rapid Reduction”), is a
9 Delaware limited liability company with its mailing address and principal place of
10 business at 114 W. Pacific Ave., Suite 200, Spokane, Washington 99201. Rapid
11 Reduction transacts or has transacted business in this district and throughout the
12 United States.

13 7. Defendants AMS and Rapid Reduction have operated as a common
14 enterprise while engaging in the unlawful acts and practices alleged below. AMS
15 and Rapid Reduction have conducted the business practices described below and
16 share common ownership, officers, business functions, materials, and website form
17 and content. Because AMS and Rapid Reduction have operated as a common
18 enterprise, each of them is jointly and severally liable for the acts and practices
19 alleged below. Individual defendants Bishop and Rohlf have formulated, directed,
20 controlled, had the authority to control, or participated in the acts and practices of
21 AMS and Rapid Reduction that constitute the common enterprise.

22 8. Ryan David Bishop (“Bishop”) is an owner and member of AMS and
23 Rapid Reduction. At times material to this Complaint, acting alone or in concert
24 with others, he has formulated, directed, controlled, had the authority to control, or
25 participated in the acts and practices set forth in this Complaint. Defendant Bishop
26 is or has been a signatory on AMS bank accounts. He has initiated or authorized
27 payments or wire transfers from these AMS accounts to persons or entities in
28 apparent furtherance of the enterprise. He is or has been listed as a responsible

1 party on the AMS telephone service account and as the contact on the AMS
2 website registration. He resides in Spokane County, Washington, and, in
3 connection with the matters alleged herein, transacts or has transacted business in
4 this district and throughout the United States.

5 9. Michael L. Rohlf (“Rohlf”) is an owner and member of AMS and
6 Rapid Reduction. At times material to this Complaint, acting alone or in concert
7 with others, he has formulated, directed, controlled, had the authority to control, or
8 participated in the acts and practices set forth in this Complaint. Defendant Rohlf
9 signed a contract between AMS and PDMI as an owner of AMS, and is or has been
10 a signatory on AMS bank accounts through which he has initiated or authorized
11 payments or wire transfers to persons or entities in apparent furtherance of the
12 enterprise. He is or has been listed as a responsible party on an AMS telephone
13 service account. He resides in Spokane County, Washington, and, in connection
14 with the matters alleged herein, transacts or has transacted business in this district
15 and throughout the United States.

16 10. PDM International, Inc., also doing business as Priority Direct
17 Marketing International, Inc. (“PDMI”), is a Delaware corporation with its mailing
18 address and principal place of business at 2132 L Don Dodson Dr., Bedford, Texas
19 76021. PDMI transacts or has transacted business in this district and throughout
20 the United States.

21 11. William D. Fithian (“Fithian”) is the sole owner and officer of PDMI.
22 At times material to this Complaint, acting alone or in concert with others, he has
23 formulated, directed, controlled, had the authority to control, or participated in the
24 acts and practices set forth in this Complaint. Defendant Fithian signed a contract
25 between AMS and PDMI as president of PDMI. He is or has been listed as the
26 contact on the PDMI website registration and as the primary contact for a PDMI
27 telephone service account. Fithian has also initiated or authorized the wiring of
28 significant funds to AMS from a PDMI bank account. He resides in Tarrant

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

3 **COMMERCE**

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

7 **DEFENDANTS’ BUSINESS PRACTICES**

8 13. Since at least 2008, Defendants AMS, Bishop, and Rohlf have
9 marketed a credit card interest rate reduction service to consumers nationwide and
10 have provided fulfillment and customer service in connection with the credit card
11 interest rate reduction service.

12 14. Since at least 2008, Defendants PDMI and Fithian have been
13 telemarketers for AMS. They have marketed a credit card interest rate reduction
14 service to consumers nationwide and have provided payment processing to allow
15 for the collection of payments from consumers who purchase the credit card
16 interest rate reduction service.

17 15. Since at least late 2009, Defendants Rapid Reduction, Bishop, and
18 Rohlf have marketed a credit card interest rate reduction service to consumers
19 nationwide and have provided customer service and fulfillment in connection with
20 the marketing of the credit card interest rate reduction service.

21 16. In the course of marketing their credit card interest rate reduction
22 service, Defendants have engaged in telemarketing by participating in a plan,
23 program, or campaign conducted to induce the purchase of goods or services by
24 use of one or more telephones and which involves more than one interstate
25 telephone call.

26 17. In numerous instances, Defendants, or intermediaries acting on
27 Defendants’ behalf, have initiated telephone calls that deliver prerecorded voice
28 messages to induce consumers to purchase their credit card interest rate reduction

1 service. These calls are known as “voice broadcasts” or “robocalls.”

2 18. In numerous instances, when consumers answer the telemarketing
3 calls, Defendants, or intermediaries acting on behalf of Defendants, do not connect
4 the call to a live sales representative, but play prerecorded messages that offer the
5 opportunity to secure lower credit card interest rates before instructing the recipient
6 of the telephone call to press a number on their phone to be connected to a live
7 representative. Consumers who press that number are connected to live
8 representatives of AMS or PDMI, who offer to sell their credit card interest rate
9 reduction service.

10 19. To market their credit card interest rate reduction service, Defendants,
11 or intermediaries acting on Defendants’ behalf, have also initiated telephone calls
12 to consumers in which live representatives offer to sell the service.

13 20. Defendants have also marketed their credit card interest rate reduction
14 service via the Internet on several websites, including <http://pdmi.us>,
15 www.amsplanning.com, and www.rapidreductions.com.

16 21. In numerous instances, Defendants identify themselves during the
17 telemarketing calls using the phrases “Card Services,” “Client Services,”
18 “Financial Services,” or some similar generic phrase that does not identify the
19 seller of the services by name.

20 22. In numerous instances, Defendants, or intermediaries acting on
21 Defendants’ behalf, have initiated telephone calls to consumers to induce the sale
22 of credit card interest rate reduction services and have failed to disclose truthfully,
23 promptly, and in a clear and conspicuous manner to the person receiving the call
24 the identity of the “seller” or person that would provide or arrange to provide the
25 services promoted by the telemarketing call, that the purpose of the call is to sell
26 goods or services, or the nature of the goods or services.

27 23. During the telemarketing calls, Defendants claim that they will
28 substantially reduce consumers’ credit card interest rates. Defendants also often

1 claim that their program will provide substantial savings to consumers, typically
2 \$2500 or more in a short time.

3 24. Defendants charge each consumer a fee that typically ranges from
4 \$499 to \$1590 for their services, which Defendants require be paid by credit card.
5 Defendants represent that the amount of the fee will be offset quickly by savings
6 achieved through reduced credit card interest rates.

7 25. In numerous instances, Defendants guarantee that, if the consumer
8 does not save the promised amount of \$2500 or more in a short time, the consumer
9 will receive a full refund of the costs of Defendants' services.

10 26. In the final step of the transaction, Defendants record a part of a
11 telephone conversation with the consumer in which the consumer verifies his or
12 her name, address, and other billing details, including credit card information.
13 Defendants typically place the entire charge on the consumer's credit card
14 immediately following the telemarketing call.

15 27. After the consumer's credit card account is charged, Defendants mail
16 a package to the consumer containing a contract and forms for the consumer to
17 complete and return listing all of the consumer's credit card account information.
18 In numerous instances, the letterhead on these materials contains the name PDMI,
19 AMS, Rapid Reduction, or some other entity name, but bears AMS's Spokane,
20 Washington, mailing address. The package instructs the consumer to return the
21 completed contract and forms to the Spokane, Washington, address.

22 28. In numerous instances, after consumers complete and return the
23 contract and the forms to the AMS address, consumers hear nothing more from
24 Defendants, or Defendants inform consumers that they were not successful in
25 lowering the consumers' credit card interest rates. In other instances, Defendants
26 schedule a three-way telephone call with the consumer and the customer service
27 department of the consumer's credit card issuer. In these instances, a
28 representative typically asks the consumer to verbally authorize the representative

1 to discuss the consumer's credit card account with the credit card issuer's customer
2 service representative. Once the consumer provides the verbal authorization, the
3 consumer is told to hang up. Sometimes, the consumer has remained on the line
4 throughout the call. In numerous instances, either the Defendants tell the consumer
5 that they were not able to lower the consumer's credit card interest rate or the
6 consumer hears the credit card company decline the request and the call ends.

7 29. Having failed to lower the consumer's credit card interest rates,
8 Defendants sometimes urge the consumer to apply for a credit card with a low
9 introductory rate and, if approved, to transfer the balances from his or her high
10 interest rate credit cards to the new low introductory rate card. This is not what
11 consumers understood they were paying for, and over-extended consumers are not
12 likely to be approved for a low rate card.

13 30. In numerous instances, in lieu of a credit card interest rate reduction,
14 Defendants AMS, Rapid Reductions, Bishop, and Rohlf provide consumers with a
15 payment acceleration plan, described as a "debt elimination plan," showing how
16 the consumer's total interest payments will be lower if the consumer pays more
17 than a minimum payment amount, and directing the payments so that the credit
18 card with the highest interest rate will be paid off first. The payment acceleration
19 plan does not reduce the consumer's credit card interest rate and this generic
20 advice concerning the effect of making higher payments or paying off higher
21 interest debts first is not what consumers understood they were paying for.

22 31. In numerous instances, Defendants fail to provide consumers with the
23 reduced credit card interest rates or the minimum \$2500 in savings promised
24 during the initial sales calls.

25 32. In numerous instances, consumers contact Defendants and seek
26 refunds based on Defendants' failure to deliver on the promises made to the
27 consumers. In numerous instances, Defendants decline to refund the fee charged to
28 consumers for purchasing their services, claiming that their payment acceleration

1 plan shows how the promised savings could occur. In numerous instances,
2 consumers file complaints with the Better Business Bureau (“BBB”), and the BBB
3 forwards those complaints to AMS. AMS tells consumers, via the BBB, that the
4 entity responsible for providing refunds is PDMI and refers consumers to PDMI.
5 When PDMI does provide a refund, it typically retains a \$199 “non-refundable”
6 fee.

7 33. In connection with telemarketing their program, Defendants, directly
8 or through their agents or intermediaries, have made numerous calls to telephone
9 numbers on the National Do Not Call Registry (“Registry”).

10 34. In connection with telemarketing their service, Defendants, directly or
11 through their agents or intermediaries, have initiated telephone calls to the
12 telephone numbers of consumers who have previously stated that they do not wish
13 to receive calls by or on behalf of Defendants.

14 35. In numerous instances, Defendants have initiated outbound
15 telemarketing calls, including some on or after December 1, 2008, with
16 prerecorded messages, that failed to disclose truthfully, promptly, and in a clear
17 and conspicuous manner to the person receiving the call: the identity of the seller;
18 that the purpose of the call is to sell goods or services; and the nature of the goods
19 or services.

20 36. In the course of the telemarketing described above, since September 1,
21 2009, Defendants or intermediaries acting on behalf of Defendants have initiated
22 numerous telephone calls that delivered prerecorded messages to induce the sale of
23 goods or services when the persons to whom those telephone calls were made had
24 not signed an express agreement, in writing, authorizing the seller to place those
25 prerecorded calls.

VIOLATIONS OF THE FTC ACT

37. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

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

COUNT ONE

Making Misrepresentations of Material Facts

39. In numerous instances, in connection with the marketing, offering for sale, or sale of a credit card interest rate reduction service, Defendants have represented, directly or indirectly, expressly or by implication, that:

- A. Consumers who purchase Defendants’ credit card interest rate reduction service will have their credit card interest rates reduced substantially;
- B. Consumers who purchase Defendants’ credit card interest rate reduction service will save thousands of dollars in a short time as a result of lowered credit card interest rates; and
- C. Defendants will provide full refunds if consumers do not save thousands of dollars as a result of lowered credit card interest rates.

40. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 39 of this Complaint,

- A. Consumers who purchase Defendants’ credit card interest rate reduction service do not have their credit card interest rates reduced substantially;
- B. Consumers who purchase Defendants’ credit card interest rate reduction service do not save thousands of dollars in a short time as a result of lowered credit card interest rates; and

1 C. Defendants do not provide full refunds when consumers do not
2 save thousands of dollars as a result of lowered credit card
3 interest rates.

4 41. Therefore, Defendants' representations as set forth in Paragraph 39 of
5 this Complaint are false and misleading and constitute deceptive acts or practices
6 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **COUNT TWO**

8 **Failure to Disclose Material Refund Condition**

9 42. In connection with the marketing, offering for sale, or sale of a credit
10 card interest rate reduction service, Defendants have represented, directly or
11 indirectly, expressly or by implication, that consumers who purchase Defendants'
12 service are guaranteed a full refund if they do not save at least \$2500.

13 43. In numerous instances in which Defendants have made the
14 representation set forth in Paragraph 42, Defendants have failed to disclose that the
15 purported savings and guaranteed refund depend upon consumers' compliance
16 with a payment acceleration schedule, not upon Defendants' ability to negotiate
17 reduced credit card interest rates with consumers' creditors. This additional
18 information would be material to consumers in deciding whether to purchase
19 Defendants' credit card interest rate reduction service.

20 44. In light of the representations set forth in Paragraph 42 above, the
21 failure to disclose the information in Paragraph 43 is a material omission and
22 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,
23 15 U.S.C. § 45(a).

24 **THE TELEMARKETING SALES RULE**

25 45. Congress directed the FTC to prescribe rules prohibiting abusive and
26 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
27 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in
28 1995, extensively amended it in 2003, and amended certain provisions thereafter.

1 16 C.F.R. Part 310.

2 46. Defendants are “seller[s]” or “telemarketer[s]” engaged in
3 “telemarketing” as those terms are defined in the TSR, 16 C.F.R. § 310.2 (z), (bb),
4 and (cc).

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

9 48. The TSR also prohibits sellers and telemarketers from
10 misrepresenting, directly or by implication, in the sale of goods or services, any
11 material aspect of the nature or terms of the seller’s refund, cancellation, exchange,
12 or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

13 49. The TSR also prohibits sellers and telemarketers from failing to
14 disclose truthfully, and in a clear and conspicuous manner, before a customer pays
15 for goods and services offered, all the material terms and conditions of a refund,
16 cancellation, exchange, or repurchase policy, if the seller or telemarketer has such a
17 policy and informs the consumers about such policy. 16 C.F.R. § 310.3(a)(1)(iii).

18 50. AMS, Rapid Reduction, Bishop, and Rohlf are “persons” as that term
19 is defined in the TSR. 16 C.F.R. § 310.2(v).

20 51. The TSR also prohibits persons from providing substantial assistance
21 or support to any seller or telemarketer where the person knows or consciously
22 avoids knowing that the seller or telemarketer is engaged in any act or practice that
23 violates Section 310.3(a) of the TSR. 16 C.F.R. § 310.3(b).

24 52. Under the TSR, an "outbound telephone call" means a telephone call
25 initiated by a telemarketer to induce the purchase of goods or services or to solicit
26 a charitable contribution. 16 C.F.R. § 310.2(u). Defendants have initiated, or have
27 caused telemarketers to initiate, "outbound telephone calls" to consumers.

28 53. Among other things, the 2003 amendments to the TSR established a

1 "do-not-call" registry (the "National Do Not Call Registry" or "Registry"),
2 maintained by the FTC, of consumers who do not wish to receive certain types of
3 telemarketing calls. Consumers can register their telephone numbers on the
4 Registry without charge either through a toll-free telephone call or over the Internet
5 at www.donotcall.gov.

6 54. The TSR prohibits sellers and telemarketers from initiating an
7 outbound telephone call to numbers on the Registry in violation of the TSR.
8 16 C.F.R. § 310.4(b)(1)(iii)(B).

9 55. The TSR also prohibits sellers and telemarketers from initiating an
10 outbound telephone call to any person when that person previously has stated that
11 he or she does not wish to receive an outbound telephone call made by or on behalf
12 of the seller whose goods or services are being offered. 16 C.F.R.
13 § 310.4(b)(1)(iii)(A).

14 56. The TSR requires telemarketers in an outbound telephone call to
15 disclose truthfully, promptly, and in a clear and conspicuous manner the following
16 information:

- 17 A. The identity of the seller;
- 18 B. That the purpose of the call is to sell goods or services; and
- 19 C. The nature of the goods or services.

20 16 C.F.R. § 310.4(d)(1), (2), and (3). Amendments to the TSR that became
21 effective on December 1, 2008, also specify that a seller or telemarketer that
22 initiates any outbound telephone call to deliver a prerecorded message must,
23 among other requirements, promptly make these disclosures in the prerecorded
24 message. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

25 57. As amended, effective September 1, 2009, the TSR prohibits initiating
26 a telephone call that delivers a prerecorded message to induce the purchase of any
27 good or service unless the seller has obtained from the recipient of the call an
28 express agreement, in writing, that evidences the willingness of the recipient of the

1 call to receive calls that deliver prerecorded messages by or on behalf of a specific
2 seller. The express agreement must include the recipient's telephone number and
3 signature, must be obtained after a clear and conspicuous disclosure that the
4 purpose of the agreement is to authorize the seller to place prerecorded calls to
5 such person, and must be obtained without requiring, directly or indirectly, that the
6 agreement be executed as a condition of purchasing any good or service. 16 C.F.R.
7 § 310.4(b)(1)(v)(A).

8 58. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
9 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
10 of the TSR constitutes an unfair or deceptive act or practice in or affecting
11 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

13 **COUNT THREE**

14 **Misrepresenting Material Information**

15 59. In numerous instances, in the course of telemarketing goods or
16 services, Defendants have misrepresented, directly or by implication, that:

- 17 A. Consumers who purchase Defendants' credit card interest rate
18 reduction service will have their interest rates reduced
19 substantially; and
20 B. Consumers who purchase Defendants' credit card interest rate
21 reduction service will save thousands of dollars in a short time
22 as a result of lowered credit card interest rates.

23 60. Defendants' acts and practices, as described in Paragraph 59 above,
24 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R.
25 § 310.3(a)(2)(iii).

COUNT FOUR

Making Refund Misrepresentations

61. In numerous instances, in the course of telemarketing goods or services, Defendants have misrepresented, directly or by implication, that Defendants will provide full refunds if consumers do not save thousands of dollars as a result of lowered credit card interest rates.

62. Defendants' acts and practices, as described in Paragraph 61 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT FIVE

Failing to Disclose Terms and Conditions of Refund

63. In numerous instances, in the course of telemarketing goods or services, Defendants have represented, directly or by implication, that consumers who purchase Defendants' credit card interest rate reduction service are guaranteed a full refund if they do not save at least \$2500.

64. In numerous instances in which Defendants have made the representation set forth in Paragraph 63, Defendants have failed to disclose that the purported savings and guaranteed refund depend upon consumers' compliance with a payment acceleration schedule, not upon Defendants' ability to negotiate reduced interest rates with consumers' creditors. This additional information would be material to consumers in deciding whether to purchase Defendants' credit card interest rate reduction service.

65. In light of the representation set forth in Paragraph 63 above, the failure to disclose these terms or conditions, in a clear and conspicuous manner, is a deceptive act or practice that violates the TSR, 16 C.F.R. § 310.3(a)(1)(iii).

1 **COUNT SIX**

2 **Assisting and Facilitating**

3 66. In numerous instances, AMS, Bishop, and Rohlf have provided
4 substantial assistance or support to PDMI and Fithian, including, but not limited to,
5 fulfillment and customer service, when AMS, Bishop, and Rohlf knew or
6 consciously avoided knowing that PDMI and Fithian were misrepresenting, or
7 failing to disclose truthfully in a clear and conspicuous manner, directly or by
8 implication, material information in the sale of their goods or services in violation
9 of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), § 310.3(a)(2)(iv), or § 310.3(a)(1)(iii).

10 67. Defendants AMS, Bishop, and Rohlf’s substantial assistance or
11 support as alleged in Paragraph 66 is a deceptive telemarketing act or practice that
12 violates the TSR, 16 C.F.R. § 310.3(b).

13 **COUNT SEVEN**

14 **Violating the National Do Not Call Registry**

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

19 **COUNT EIGHT**

20 **Failing to Honor Entity-Specific Do Not Call Requests**

21 69. In numerous instances, in connection with telemarketing, Defendants
22 have engaged, or caused a telemarketer to engage, in initiating an outbound
23 telephone call to a person who previously has stated that he or she does not wish to
24 receive an outbound telephone call made by or on behalf of the seller whose goods
25 or services are being offered, in violation of the TSR, 16 C.F.R.
26 § 310.4(b)(1)(iii)(A).

1 **COUNT NINE**

2 **Failing to Make Required Oral Disclosures**

3 70. In numerous instances, in the course of telemarketing goods or
4 services, Defendants have made, or have caused a telemarketer to make, outbound
5 telephone calls, including, on or after December 1, 2008, outbound telephone calls
6 to deliver prerecorded messages, in which the telemarketer or message failed to
7 disclose promptly and in a clear and conspicuous manner to the person receiving the
8 call:

- 9 a. The identity of the seller;
10 b. That the purpose of the call is to sell goods or services; or
11 c. The nature of the goods or services.

12 71. The Defendants' practice as alleged in Paragraph 70 is an abusive
13 telemarketing practice that violates the TSR, 16 C.F.R. § 310.4(d) and 16 C.F.R.
14 § 310.4(b)(1)(v)(B)(ii).

15 **COUNT TEN**

16 **Initiating Unlawful Prerecorded Messages on or after September 1, 2009**

17 72. In numerous instances on or after September 1, 2009, in the course of
18 telemarketing goods or services, Defendants have initiated, or caused a telemarketer
19 to initiate, outbound telephone calls that delivered prerecorded messages when the
20 persons to whom these telephone calls were made had not signed an express
21 agreement, in writing, authorizing the seller to place prerecorded calls to such
22 person, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A).

23 **CONSUMER INJURY**


24 73. Consumers have suffered and will continue to suffer substantial injury
25 as a result of Defendants' violations of the FTC Act and the TSR. In addition,
26 Defendants have been unjustly enriched as a result of their unlawful acts and
27 practices. Absent injunctive relief by this Court, Defendants are likely to continue
28 to injure consumers, reap unjust enrichment, and harm the public interest.

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

3
4 Respectfully Submitted,

5 WILLARD K. TOM
6 General Counsel
7 ROBERT J. SCHROEDER
8 Regional Director

9 DATED: May 10, 2010

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