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UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION

US DISTRICT COURT MIDDLE DISTRICT OF FLORIDA ORLANDO, FLORIDA

Federal Trade Commission, and State of Florida, Office of the Attorney General Plaintiffs, v. Information Management Forum, Inc., a Florida corporation, also d/b/a Vacation Property Marketing and Vacation Property Marketing, Inc.; and Edward Lee Windsor, individually, and as an officer of Information Management Forum, Inc. Defendants.

Civ No. 6:12-cv-986-Orl-31KRS

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission ("FTC"), and State of Florida, Office of the Attorney General ("State of Florida"), for their Complaint allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

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2. The State of Florida brings this action pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2010), to obtain temporary and permanent injunctions, consumer restitution and other equitable relief, and reimbursement of costs and attorneys' fees.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

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

### **PLAINTIFFS**

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

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

7. The State of Florida is one of fifty sovereign States of the United States.

Pursuant to authority found in 15 U.S.C. § 6103(a), the State of Florida is authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of Florida. Plaintiff, State of Florida by and through its Attorney General, also brings a state claim pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2010). The Attorney General has determined that an enforcement action serves the public interest as required by Section 501.207. This Court has supplemental jurisdiction over the State of Florida's state claim pursuant to 28 U.S.C. § 1367.

#### **DEFENDANTS**

8. Defendant Information Management Forum, Inc., also doing business as Vacation Property Marketing and Vacation Property Marketing, Inc. (collectively "Information Management"), is a Florida corporation with its registered address at 5401 S. Kirkman Road, Suite 502, Orlando, Florida 32819. Information Management transacts or has transacted business in this district and throughout the United States.

9. Defendant Edward Lee Windsor ("Windsor") is an owner, officer or manager of Information Management. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, the acts and practices of Information Management, including the acts and practices set forth in this Complaint. Defendant Windsor resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

### **COMMERCE**

10. 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’ BUSINESS ACTIVITIES**

11. Since at least 2010, and continuing thereafter, Defendants have engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare rental or resale services through interstate telephone calls to consumers throughout the United States.

12. Defendants, directly or through their agents, contact consumers through unsolicited telemarketing calls. Defendants contact consumers who own timeshare properties. In contacting these consumers, Defendants often already have information about the consumers’ timeshare properties, such as the properties’ names and locations.

13. Frequently, Defendants begin their telemarketing calls by representing that they have renters or a buyers for consumers’ timeshare properties. In many instances, Defendants tell consumers that their purported renters or buyers are willing to pay a specific dollar amount for consumers’ timeshare properties, which are typically prices that are likely to be agreeable to consumers. Defendants also say that they can rent or sell consumers’ timeshare properties in a very short period of time.

14. Defendants then inform consumers they must pay a “registration fee,” generally ranging from \$500-\$2,000, to secure the deal. Defendants guarantee consumers their money back if Defendants fail to rent or sell consumers’ timeshares as promised or if

consumers make a request for their money back within a set period of time.

15. Consumers who pay Defendants' registration fee do not obtain a renter or buyer for their property and, as a consequence, do not receive their rental or sales proceeds. Nor do consumers receive a refund of their "registration fee" when Defendants fail to rent or sell their timeshares or when they request their money back within the time allotted.

**A. The Pitch**

16. Defendants typically begin their calls with an alluring pitch. Using pre-acquired information about consumers' timeshares, Defendants identify consumers' properties by name, say they have an immediate need for the properties, and ask whether consumers would be willing to rent or sell the properties very quickly and for a good profit.

17. Defendants often tell consumers that they provide timeshare units to major corporations and businesses, like Home Depot and PEPSI, to use the units for business travel and annual events. Defendants then explain to consumers that they have huge backlog of orders to fill for their clients in the area where consumers' timeshares are located and they need consumers' timeshares to fill those orders. Many times, Defendants will add a sense of urgency by saying that a convention or major event is occurring in the very near future and they must have consumers' timeshares to satisfy their corporate clients' demands.

18. In one telemarketing script, recently secured by state regulators during a surprise inspection, Defendants' telemarketers are instructed to say:

The name of our company is Vacation Property Marketing. What we do is market and advertise the rental and sale of resort properties to corporations who use them for conventions, training seminars, employee perks, business trips as well as their own vacation time . . . . Does that make sense? . . . . Now,

the reason that I've been calling you is because this weekend there is going to be a major event at . . . . We currently have over 700 corporate buyers and renters coming into town for this event. This would be phenomenal exposure for your property as long as you both know you want to rent/sell and secure a return on your investment.

19. Defendants then provide consumers with an attractive dollar figure that they say they can obtain for consumers' properties. For instance, consumers are told that their property will rent for an exact dollar figure, such as \$1,800 a week, or that they have a buyer who is ready, willing and able to pay a specific amount, such as \$18,500, for the purchase of the consumer's timeshare interest.

20. Consumers are also assured that their property will be rented or sold within a very short period of time. Many consumers who agree to rent their timeshares are told that their property will be rented "immediately" or within seven to ten days of the consumers' agreement with Defendants. Consumers who agree to sell are typically told their closings will occur within sixty to ninety days. In either event, consumers are guaranteed that their property will rent or sell within a short time. According to one of Defendants' telemarketing scripts, Defendants explain:

Now, our average turn around time is 45-60 days. However, our program is designed to get your property sold/rented within the first 90 days . . . . Keep in mind, as long as you are willing to accept an offer between the numbers that I gave you, **your property will sell/rent within 90 days (emphasis added).**

**B. The Close**

21. After consumers have been assured that Defendants can rent or sell their timeshare properties for a very good price and in a very short time, Defendants then inform

consumers that they must pay an up-front “registration fee” ranging anywhere from \$500 to \$2,000. For rentals, Defendants explain to consumers that the “registration fee” is a one-time cost for their “lifetime” rental program. For sales, Defendants tell consumers that the fee will cover the costs of their marketing contract and costs associated with the sale of consumers’ properties. According to Defendants’ telemarketing scripts, the quoted “registration fee” is the same price whether Defendants’ offer is to provide renters or purchasers to consumers.

22. To mitigate the sting of the up-front fee, many consumers are assured that they will have the proceeds of their rental or sale either before or shortly after Defendants’ charge to consumers’ credit cards become due.

23. To further enhance their deal, Defendants also tell consumers that they will provide consumers with money-back guarantees. Many consumers are promised that they will receive a return of their money if Defendants cannot rent or sell consumers’ timeshares within a set period of time. Still other consumers are promised that they will receive a return of their money if anyone can rent or sell the consumers’ timeshare faster than Defendants. Consumers are also uniformly promised that they have a set period of time to cancel for any reason, which is usually seven days from either the date of their agreement or the date that Defendants place consumers’ properties on their website.

24. When Defendants are questioned by consumers about their offer, Defendants tell consumers who ask that they cannot provide the exact names of their renters or buyers until after consumers agree to the deal and pay Defendants their fee. Defendants also assure consumers that they will quickly recover their fee from consumers’ rental or sale proceeds.

25. Defendants also tell consumers that a contract confirming all the terms and conditions of their agreement will be sent to them shortly either by email or by post.

Consumers are instructed to sign the agreement and return it to Defendants. Consumers are told that their agreement with Defendants will begin as soon as Defendants receive the signed contract. Consumers are reminded that they have a set period of time to cancel for any reason.

26. Consumers are then asked for their credit card or their debit card information so that Defendants can charge consumers the amount of their up-front, "registration fee." The charges are posted almost immediately thereafter.

### **C. The Verification**

27. Consumers who agree to pay Defendants' fee are typically transferred to another representative who records consumers verifying their billing information and their agreement to be charged. During the verification process, consumers are typically asked to confirm their personal and billing information, the location of their property, and the amount of the rental or sales price that Defendants have previously told consumers they will receive for their timeshare unit.

28. Defendants also sometimes ask in their verification process whether consumers have been promised a specific buyer or renter for their property. Consumers who are asked typically say "no," either because they have not asked for the name of a buyer or renter or because when they did ask Defendants said that information could not be disclosed until after consumers signed their agreement.



**D. The Contract**

29. Many consumers state that they do not receive any contract or written agreement from Defendants.

30. Other consumers report that they do receive a contract, typically by email, but that it does not represent what consumers agreed to when they paid Defendants their money. Instead of receiving the terms of a proposed rental or sales agreement, consumers receive a marketing contract to advertise their timeshare on the Internet.

31. For the first time, in small print at the bottom of the contract, Defendants disclose that they are a “for sale by owner marketing company,” which has “sold zero timeshare properties for the previous two years.” In equally small print at the bottom of the contract, Defendants disclaim all promises and guarantees that they can sell consumers’ properties within a specific time frame or for a specific price.

32. Defendants take consumers’ payments well before consumers ever receive the contract or become aware of the true nature of Defendants’ offer.

**E. What Consumers Actually Receive**

33. Consumers who pay Defendants’ “registration fee” do not receive what they are promised. Consumers’ properties are not rented or sold within a short period of time or for a good price. Indeed, consumers’ timeshares are not rented or sold at all. Consumers do not receive their promised rental or sale proceeds. Consumers also generally do not receive a refund when their rental or sale fails to occur and when consumers seek a return of their money within the time frame they are told they can cancel.

34. Instead, in many instances, Defendants string along consumers with additional false promises that a rental or sale is imminent, that they will receive their rental or sales proceeds shortly, or that consumers' refunds are being processed and will soon be received. Consumers are often strung along so long that they are no longer able to obtain a return of their money by contesting the charge through their credit card provider.

35. In only limited instances do Defendants offer consumers a small portion of their money back to settle the matter.

36. Most often, Defendants routinely and flatly deny consumers a return of their money. In these instances, Defendants argue that they have fulfilled their agreement by placing consumers' timeshare information on their website, onlinevpm.com, and that is all that they are required to do. Consumers are left with nothing more than a small advertisement for their timeshare on an obscure website, if they receive anything at all.

#### **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.

#### **COUNT I** **(By Plaintiff FTC)**

39. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their timeshare rental and resale services, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Defendants have a renter or buyer for the consumer's timeshare property who will pay a specified price or that Defendants will quickly rent or sell the consumer's timeshare;

B. Defendants will refund their fee to the consumer if the rental or sale does not take place as promised; and

C. Defendants will refund their fee to the consumer if the consumer requests a return of the payment within a specified period of time.

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. Defendants do not have a renter or buyer for the consumer's timeshare property who will pay a specified price and Defendants do not quickly rent or sell the timeshare;

B. Defendants do not refund their fee to the consumer when the promised rental or sale fails to occur; and

C. Defendants do not refund their fee to the consumer who requests it within a specified period of time.

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

#### **THE TELEMARKETING SALES RULE**

42. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C.

§§ 6101-6108, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter.

43. Defendants are “sellers” or “telemarketer[s]” engaged in “telemarketing,” as defined by the TSR. 16 C.F.R. §§ 310.2(aa), (cc) and (dd).

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

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

46. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**COUNT II**  
**(By Each Plaintiff)**

47. In numerous instances, in the course of telemarketing their goods and services, Defendants have made false or misleading statements, directly or by implication, to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that:

A. Defendants have a renter or buyer for the consumer's timeshare property who will pay a specified price or that Defendants will quickly rent or sell the consumer's timeshare;

B. Defendants will refund their fee to the consumer if the rental or sale does not take place as promised; and

C. Defendants will refund their fee to the consumer if the consumer requests a return of the payment within a specified period of time.

48. Defendants' acts or practices, as described in Paragraph 47 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. §§ 310.3(a)(2)(iv) or 310.3(a)(4).

**VIOLATIONS OF THE FLORIDA DECEPTIVE  
AND UNFAIR TRADE PRACTICES ACT**

49. Section 501.204 of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2011), prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce."

**COUNT III**  
**(By Plaintiff State of Florida)**

50. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their timeshare rental and resale services, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Defendants have a renter or buyer for the consumer's timeshare property who will pay a specified price or that Defendants will quickly rent or sell the consumer's timeshare;

B. Defendants will refund their fee to the consumer if the rental or sale does not take place as promised; and

C. Defendants will refund their fee to the consumer if the consumer requests a return of the payment within a specified period of time.

51. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 50 of this Complaint:

A. Defendants do not have a renter or buyer for the consumer's timeshare property who will pay a specified price and Defendants do not quickly rent or sell the timeshare;

B. Defendants do not refund their fee to the consumer when the promised rental or sale fails to occur; and

C. Defendants do not refund their fee to the consumer who requests it within a specified period of time.

52. Therefore, Defendants' representations as set forth in Paragraph 50 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 501.204 of the Florida Deceptive and Unfair Trade Practices Act.

### **CONSUMER INJURY**

53. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, the TSR and the Florida Deceptive and Unfair Trade Practices Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

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

54. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

55. 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 resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

56. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), empowers this Court to grant the State of Florida injunctive and such other relief as the Court may deem appropriate to halt violations of the TSR and to redress injury to consumers, including the award of damages, restitution, or other compensation.

57. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of Florida to enforce its state law claims against Defendants in this Court for violations of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2010), and to grant such relief as provided under state law, including injunctive relief, restitution, costs and attorneys fees, and such other relief to which the State of Florida may be entitled.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff FTC, 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, and the Plaintiff State of Florida, pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, and the Court's own equitable powers, request that the Court:

A. Award Plaintiffs 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, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act, the TSR, and the Florida Deceptive and Unfair Trade Practices Act by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the TSR and the Florida Deceptive and Unfair Trade Practices Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and


D. Award Plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.



Respectfully Submitted,

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