

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**NHS SYSTEMS, INC.,**

a Pennsylvania corporation, also d/b/a  
National Healthcare Solutions and  
National Health Net Online, and

**PLUS HEALTH SAVINGS, INC.,**

a Pennsylvania corporation, and

**PHYSICIANS HEALTH SYSTEMS, INC.,**

a Delaware corporation, also d/b/a  
American Health Benefits On Line,  
and

**HARRY F. BELL, JR.,**

individually and as an officer or principal  
of NHS Systems, Inc., Plus Health Savings,  
Inc., and Physicians Health Systems, Inc.,  
and

**PHYSICIAN HEALTH SERVICE, LLC,**

a Missouri limited liability company, also  
d/b/a American Health Benefits On Line,  
and

**HEALTH MANAGEMENT, LLC,**

a Missouri limited liability company, and

**DONNA NEWMAN,**

individually and as an officer or principal  
of Physician Health Service, LLC, and  
Health Management, LLC, and

**6676529 CANADA, INC.,**

a Canadian corporation, and

Civ. Action No. 08-cv-2215

**AMENDED COMPLAINT FOR  
INJUNCTIVE AND OTHER  
EQUITABLE RELIEF**

**NICOLE BERTRAND,**  
individually and as an officer or principal of  
6676529 Canada, Inc., and

**BARRY KIRSTEIN,**  
individually, and

**“DANNIE BOIE,”**  
a person whose true identity is unknown,  
individually, and

**PHS ENTERPRISES, INC.,**  
a Nevada corporation, and

**FIRST STEP MANAGEMENT, INC.,**  
a St. Lucia company, and

**GOLD DOT, INC.,**  
a St. Lucia company, and

**LINKE JN PAUL,**  
individually and as an officer or principal of  
First Step Management, Inc., and Gold Dot,  
Inc., and

**TASHA JN PAUL,**  
individually and as an officer or principal of  
Gold Dot, Inc., and

**NEVADA BUSINESS SOLUTIONS, INC.,**  
a Nevada corporation, and

**INTERFACE MANAGEMENT, INC.,**  
a Florida corporation, also d/b/a Galaxy  
Member Benefits, and

**BEGINNING AGAIN, INC.,**  
a Florida corporation, and

**JOHN E. BARTHOLOMEW,**  
individually and as an officer or principal of  
Interface Management, Inc., and Beginning  
Again, Inc.,

Defendants.

Plaintiff Federal Trade Commission (“FTC” or “Commission”) for its Amended Complaint alleges:

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, 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 in violation of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

#### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).
3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

#### **PLAINTIFF**

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 - 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcement of 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.

5. 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 restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

**DEFENDANTS**

6. Defendant NHS Systems, Inc. (“NHS Systems”), is a Pennsylvania corporation with its principal place of business at 555 2<sup>nd</sup> Avenue, Suite H-100, Collegeville, Pennsylvania 19426. In connection with the matters alleged herein, NHS Systems has transacted business in this District. NHS Systems also has done business using the names National Healthcare Solutions and National Health Net Online.
7. Defendant Plus Health Savings, Inc. (“Plus Health Savings”), is a Pennsylvania corporation with its principal place of business at 555 2<sup>nd</sup> Avenue, Suite H-100, Collegeville, Pennsylvania 19426. In connection with the matters alleged herein, Plus Health Savings has transacted business in this District.
8. Defendant Physicians Health Systems, Inc. (“Physicians Health Systems”), is a Delaware corporation with its principal place of business at 555 2<sup>nd</sup> Avenue, Suite H-100, Collegeville, Pennsylvania 19426. In connection with the matters alleged herein, Physicians Health Systems has transacted business in this District. Physicians Health Systems also has done business using the name American Health Benefits On Line.
9. Collectively, Defendants NHS Systems, Plus Health Savings, and Physicians Health Systems are hereafter referenced as the “Bell Defendants.”
10. Defendant Harry F. Bell, Jr., is the president of NHS Systems, Plus Health Savings, and Physicians Health Systems. In connection with the matters alleged herein, he resides or has

transacted business in this District. At all times material to this Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the Bell Defendants, including the acts and practices set forth in this Amended Complaint.

11. Defendant Physician Health Service, LLC (“Physician Health Service”), is a Missouri limited liability company, with an address in Missouri but with its principal place of business in Florida. Physician Health Service also has done business using the name American Health Benefits On Line.
12. Defendant Health Management, LLC (“Health Management”), is a Missouri limited liability company, with an address in Missouri but with its principal place of business in Florida.
13. Collectively, Defendants NHS Systems, Physician Health Service, and Health Management are hereafter referenced as the “Newman Defendants.”
14. Defendant Donna Newman is the president of Physician Health Service and Health Management, and has acted on behalf of NHS Systems in handling its inbound mail. She is a resident of Florida. In connection with the matters alleged herein, she has transacted business in this District. At times material to this Amended Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of the Newman Defendants, including the acts and practices set forth in this Amended Complaint.
15. Defendant 6676529 Canada, Inc. (“6676529 Canada”), is a Canadian corporation with its principal place of business at 4900 Cote-St-Luc, #602, Montreal QC, Canada H3W 2H3. In connection with the matters alleged herein, 6676529 Canada has transacted business in this District.

16. Defendant Nicole Bertrand is a resident of Quebec, Canada. She is the president of 6676529 Canada. In connection with the matters alleged herein, she has transacted business in this District. At all times material to this Amended Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of the NHS/PHS Corporate Defendants (as defined below), including the acts and practices set forth in this Amended Complaint.
17. Defendant Barry Kirstein is a resident of Quebec, Canada. In connection with the matters alleged herein, he has transacted business in this district. At all times material to this Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the NHS/PHS Corporate Defendants (as defined below), including the acts and practices set forth in this Amended Complaint.
18. Defendant “Dannie Boie” is an individual who has used the email addresses dannieboie@gmail.com and/or dannieboie2009@gmail.com, whose true identity is unknown to the Commission at this time. At all times material to this Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the NHS/PHS Corporate Defendants (as defined below), including the acts and practices set forth in this Amended Complaint. In connection with the matters alleged herein, he has transacted business in this District.
19. Defendant PHS Enterprises, Inc. (“PHS Enterprises”), is a Nevada corporation with its registered address at 3838 Raymert Drive, #3, Las Vegas, NV 89121-3247. In connection with the matters alleged herein, PHS Enterprises has transacted business in this District.

20. Defendant First Step Management, Inc. (“First Step”), is a St. Lucia company with its registered address at 6 Brazil Street, Castries, St. Lucia. In connection with the matters alleged herein, First Step has transacted business in this District.
21. Defendant Gold Dot, Inc. (“Gold Dot”), is a St. Lucia company with its registered address at 6 Brazil Street, Castries, St. Lucia. In connection with the matters alleged herein, Gold Dot has transacted business in this District.
22. Defendant Linke Jn Paul is a director of First Step and Gold Dot. On information and belief, he is a resident of Nevada. At all times material to this Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the NHS/PHS Corporate Defendants (as defined below), including the acts and practices set forth in this Amended Complaint.
23. Defendant Tasha Jn Paul is a director of Gold Dot. She is a resident of Nevada. At all times material to this Amended Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of the NHS/PHS Corporate Defendants (as defined below), including the acts and practices set forth in this Amended Complaint.
24. Defendant Nevada Business Solutions, Inc. (“NBS”), is a Nevada corporation with its registered address at 3838 Rymert Drive, Suite 3, Las Vegas, NV 89121. In connection with the matters alleged herein, NBS has transacted business in this District.
25. Collectively, Defendants NHS Systems, Plus Health Savings, Physicians Health Systems, Bell, Physician Health Service, Health Management, Newman, 6676529 Canada, Bertrand, Kirstein, “Dannie Boie,” PHS Enterprises, First Step, Gold Dot, Linke Jn Paul, Tasha Jn Paul, and NBS are hereafter referenced as the “NHS/PHS Defendants.”

26. Collectively, the Bell Defendants (NHS Systems, Plus Health Savings, and Physicians Health Systems), the Newman Defendants (NHS Systems, Physician Health Service, and Health Management), and Defendants 6676529 Canada, PHS Enterprises, First Step, Gold Dot, and NBS are hereafter referenced as the “NHS/PHS Corporate Defendants.”
27. Defendant Interface Management, Inc. (“Interface”), is a Florida corporation with its principal place of business at 1426 Gulf to Bay, Suite E, Clearwater, FL 33755. In connection with the matters alleged herein, Interface has transacted business in this District. Interface also has done business using the name Galaxy Member Benefits.
28. Defendant Beginning Again, Inc. (“Beginning Again”), is a Florida corporation with its principal place of business at 1426 Gulf to Bay, Suite E, Clearwater, FL 33755. In connection with the matters alleged herein, Beginning Again has transacted business in this District.
29. Defendant John E. Bartholomew is the President of Interface and Beginning Again. He is a resident of Florida. In connection with the matters alleged herein, he has transacted business in this District. At times material to this Amended Complaint, acting alone or in concert with others, he has participated in the acts and practices of the NHS/PHS Corporate Defendants, including the acts and practices set forth in this Amended Complaint. At all times material to this Amended Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Interface and Beginning Again, including the acts and practices set forth in this Amended Complaint.
30. Collectively, Defendants Bartholomew, Interface, and Beginning Again are hereafter referenced as the “Galaxy Defendants.” Collectively, Defendants Interface and Beginning Again are hereafter referenced as the “Galaxy Corporate Defendants.”



**COMMERCE**

31. At all times material to this Amended Complaint, the NHS/PHS Defendants and the Galaxy Defendants (collectively “Defendants”) have maintained a substantial course of trade in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

**DEFENDANTS’ BUSINESS ACTIVITIES**

32. The NHS/PHS Defendants and the Galaxy Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.
33. Since February 2007, the NHS/PHS Corporate Defendants have deceptively and unfairly marketed and charged consumers for one or more discount health care programs. At various times, each of individual Defendants Bell, Newman, Bertrand, Kirstein, “Dannie Boie,” Linke Jn Paul, and Tasha Jn Paul has formulated, directed, controlled, or participated in the marketing of these programs. At various times, individual Defendant Bartholomew participated in the marketing of these programs.
34. The NHS/PHS Corporate Defendants have used third-party agent telemarketers to sell the programs to consumers. During sales calls, NHS/PHS Corporate Defendants’ telemarketers have led consumers to believe that they are from or affiliated with United States government agencies, including the Social Security Administration, the Internal Revenue Service, and Medicare.
35. Typically, NHS/PHS Corporate Defendants’ telemarketers have promised consumers they will receive substantial deposits into their accounts if they provide their bank account or

credit card information. These deposits typically have been pitched as grants, tax refunds, or tax rebates that never have to be repaid by the consumers.

36. In numerous instances, the callers tell consumers that they have been selected for these grants, tax refunds, or tax rebates with no conditions.
37. In some instances, after persuading consumers that they are affiliated with the United States government and are offering to deposit money into consumers' bank accounts, the callers have mentioned a health care program. However, in such instances the callers typically downplay this aspect of the call by indicating that the consumer is agreeing only to receive information about the program, or that the program carries a small fee that will be charged only after the consumer has received the promised substantial deposit.
38. In other instances, NHS/PHS Corporate Defendants' telemarketers have represented to Medicare beneficiaries that the beneficiaries are required to provide their financial account information to continue their Medicare benefits.
39. In numerous instances, NHS/PHS Corporate Defendants' telemarketers use deceptive tactics to attempt to obtain recorded "verification" of consumers' authorization to charge the consumers' accounts. In numerous instances, the NHS/PHS Corporate Defendants have created false verification recordings.
40. Moreover, in numerous instances the NHS/PHS Corporate Defendants have charged consumers' financial accounts without any notice to the consumers and without the consumers' authorization.
41. When consumers complain about NHS/PHS Corporate Defendants' charges appearing on their account statements, the NHS/PHS Corporate Defendants typically claim that the charges were authorized. The NHS/PHS Corporate Defendants have made such claims even

in instances where no recorded authorization was available or when the recorded authorization was in a voice that was not the consumer's.

42. In numerous instances, the NHS/PHS Corporate Defendants have charged consumers who have not authorized charges against their accounts or who have been deceived into authorizing charges against their accounts. Typically, these charges have been in the amounts of \$29.95, \$299.95, \$19.95, or all of these.
43. In numerous instances, consumers charged unlawfully by the NHS/PHS Corporate Defendants (in particular, the Bell Defendants and the Newman Defendants) have also been charged unlawfully by the Galaxy Corporate Defendants for additional programs.
44. In numerous instances, consumers have been enrolled as customers of the Galaxy Corporate Defendants on the basis of purported authorizations supposedly obtained by telemarketers who were, with respect to the same consumers, also acting for the NHS/PHS Corporate Defendants (most directly, the Bell Defendants and the Newman Defendants). The Galaxy Corporate Defendants arranged for their goods and services to be presented to consumers in the verification and authorization processes used by the Bell Defendants and the Newman Defendants. In such instances, the Galaxy Corporate Defendants' transactions with consumers were tainted by the same telemarketer misconduct described above.
45. In numerous instances, the Galaxy Defendants have assisted and facilitated the activities of the NHS/PHS Corporate Defendants (most directly, the Bell Defendants and the Newman Defendants) by providing mailings of "welcome letters" and plan brochures, by brokering purported benefits programs, and by providing other services.
46. Since February 2007, NHS/PHS Corporate Defendants and Galaxy Corporate Defendants have attempted more than 20,000 unauthorized charges against consumer accounts.

**COMMON ENTERPRISES**

47. The NHS/PHS Corporate Defendants have operated together as a common enterprise while engaging in the deceptive acts and practices alleged herein. The NHS/PHS Corporate Defendants have conducted the business practices described herein through an interrelated network of companies that have common ownership, officers, managers, and business functions. Individual Defendants Bertrand, Kirstein, “Dannie Boie,” Linke Jn Paul, Tasha Jn Paul, Bell, and Newman have formulated, directed, and/or controlled, or had authority to control, or participated in the acts and practices of the corporate defendants that comprise the NHS/PHS common enterprise.
48. The Galaxy Corporate Defendants have operated together as a common enterprise while engaging in the deceptive acts and practices alleged herein. The Galaxy Corporate Defendants have conducted the business practices described herein through an interrelated network of companies that have common ownership, officers, managers, and business functions. Individual Defendant Bartholomew has formulated, directed, and/or controlled, or had authority to control, or participated in the acts and practices of the corporate Defendants that comprise the Galaxy common enterprise.

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

49. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”
50. Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

**Count I**  
**Deceptive Claims of Government Affiliation**

51. In numerous instances in connection with the marketing of purported discount health care and benefits programs, Defendants have represented, directly or indirectly, expressly or by implication, that they represent or are affiliated with United States government agencies.
52. In truth and in fact, Defendants do not represent and are not affiliated with United States government agencies.
53. Therefore, Defendants' representations as set forth in Paragraph 51 of this Amended Complaint are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count II**  
**Deceptive Claims to Offer Government Grants, Tax Refunds, or Tax Rebates**

54. In numerous instances in connection with the marketing of purported discount health care and benefits programs, Defendants have represented, directly or indirectly, expressly or by implication, that consumers who provide their financial account information to Defendants will thereby receive substantial government grants, tax refunds, or tax rebates.
55. In truth and in fact, consumers who provide their financial account information to Defendants will not thereby receive substantial government grants, tax refunds, or tax rebates.
56. Therefore, Defendants' representation as set forth in Paragraph 54 of this Amended Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count III**  
**Deceptive Claims Regarding Cost**

57. In numerous instances in connection with the marketing of purported discount health care and benefits programs, Defendants have represented, directly or indirectly, expressly or by implication, that they do not charge consumers who provide Defendants with their account information or that any charges are more than offset by substantially greater sums that Defendants cause to be deposited into the consumers' accounts.
58. In truth and in fact, Defendants do charge consumers who provide Defendants with their account information, and Defendants' charges are not offset by any greater sums that Defendants cause to be deposited into the consumers' accounts.
59. Therefore, Defendants' representations as set forth in Paragraph 57 of this Amended Complaint are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count IV**  
**Failure to Disclose Material Facts**  
**(NHS/PHS Defendants)**

60. In numerous instances, in connection with the marketing of purported discount health care and benefits programs, the NHS/PHS Defendants have represented, expressly or by implication, that consumers will receive goods or services, including health care benefits and other benefits.
61. In numerous instances, the NHS/PHS Defendants have failed to disclose, or to disclose adequately to consumers, material terms and conditions of the offer before consumers pay for the goods or services offered.

62. The NHS/PHS Defendants' failure to disclose or to disclose adequately the material information described in Paragraph 61 above, in light of the representation described in Paragraph 60 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count V**  
**Unfair Unauthorized Charges**

63. In numerous instances, Defendants have debited consumers' accounts without authorization.
64. Defendants' practice of debiting consumers' accounts without authorization causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by benefits to consumers or competition.
65. Therefore, Defendants' practice as set forth in Paragraphs 63-64 of this Amended Complaint constitutes an unfair act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

66. 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. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.
67. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

68. Under the TSR, “Free-to-pay conversion means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.” 16 C.F.R. § 310.2(o).
69. Under the TSR, “Preacquired account information means any information that enables a seller or telemarketer to cause a charge to be placed against a customer’s or donor’s account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.” 16 C.F.R. § 310.2(w).
70. The TSR prohibits sellers and telemarketers from failing to disclose truthfully in a clear and conspicuous manner, before a customer pays for goods or services, among other things, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(ii).
71. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:
- a. The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(i);
  - b. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii);



- c. A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

72. The TSR prohibits any seller or telemarketer from causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the customer's express verifiable authorization, except when the method of payment used is a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205. When an audio recording of the customer's express oral authorization is used to satisfy this requirement, the TSR requires that the recording must evidence clearly the customer's authorization of payment for the goods or services that are the subject of the telemarketing transaction and the customer's receipt of all of the following information, among other information:

- a. the number of debits, charges, or payments (if more than one);
- b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;
- c. the amount(s) of the debit(s), charge(s), or payment(s); and
- d. a telephone number for customer inquiry that is answered during normal business hours. 16 C.F.R. § 310.3(a)(3)(ii).

73. The TSR prohibits a person from providing "substantial assistance or support" to any seller or telemarketer when that person "knows or consciously avoids knowing" that the telemarketer is engaged in acts or practices that violate 16 C.F.R. § 310.3(a), (c), or (d) of

the Rule. 16 C.F.R. § 310.3(b). Such conduct constitutes a deceptive telemarketing act or practice and a violation of the TSR.

74. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to cause billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. 16 C.F.R. § 310.4(a)(6). In order to establish the consumer's "express informed consent" in a telemarketing transaction that involves preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must: "obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged" and also "obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number" for which the last four digits were provided, and also make and maintain an audio recording of the entire telemarketing transaction. 16 C.F.R. § 310.4(a)(6)(i)(A), (B) and (C).
75. 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).

**Count VI**  
**Failure to Disclose Material Conditions**  
**(NHS/PHS Defendants)**

76. In numerous instances, in the course of telemarketing one or more purported discount health care and benefits programs, the NHS/PHS Defendants have failed to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods or services offered, material terms and conditions of the offer.

77. The NHS/PHS Defendants' practice as alleged in Paragraph 76 is a deceptive telemarketing practice that violates Section 310.3(a)(1)(ii) of the TSR, 16 C.F.R. § 310.3(a)(1)(ii).

**Count VII**  
**Misrepresenting Total Cost**

78. In numerous instances, in the course of telemarketing one or more purported discount health care and benefits programs, Defendants have misrepresented, directly or by implication, the total cost that will be charged to consumers who provide Defendants with their account information.

79. Defendants' practice as alleged in Paragraph 78 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(i) of the TSR, 16 C.F.R. § 310.3(a)(2)(i).

**Count VIII**  
**Misrepresenting Nature of Services**

80. In numerous instances, in the course of telemarketing one or more purported discount health care and benefits programs, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the goods or services they sell, including that consumers who provide their financial account information to Defendants will thereby receive substantial government grants, tax refunds, or tax rebates.

81. Defendants' practice as alleged in Paragraph 80 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

**Count IX**  
**Misrepresenting Affiliation with Government**

82. In numerous instances, in the course of telemarketing one or more purported discount health care and benefits programs, Defendants have misrepresented, directly or by implication, that they are calling from, on behalf of, or are otherwise affiliated with one or more United States government entities.
83. Defendants' practice as alleged in Paragraph 82 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

**Count X**  
**Lack of Express Verifiable Authorization**

84. In numerous instances, in connection with telemarketing one or more purported discount health care and benefits programs, Defendants have caused billing information to be submitted for payment using a payment method other than a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205, without the consumer's express verifiable authorization.
85. Defendants' practice as alleged in Paragraph 84 is a deceptive telemarketing practice that violates Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

**Count XI**  
**Assisting and Facilitating Telemarketing Sales Rule Violations**  
**(Galaxy Defendants)**

86. In numerous instances, in connection with providing fulfillment and other services for the NHS/PHS Defendants, the Galaxy Defendants have provided substantial assistance or support to sellers or telemarketers whom the Galaxy Defendants knew or consciously avoided knowing violated 16 C.F.R. § 310.3(a) by, including but not limited to:
- a. failing to disclose material conditions before a consumer pays for the goods or services offered in violation of Section 310.3(a)(1)(ii) of the TSR;
  - b. misrepresenting the total cost to be charged to consumers in violation of Section 310.3(a)(2)(i) of the TSR;
  - c. misrepresenting the nature of the goods or services offered in violation of Section 310.3(a)(2)(iii) of the TSR;
  - d. misrepresenting that they are affiliated with government entities in violation of Section 310.3(a)(2)(vii) of the TSR; and
  - e. causing payment information to be submitted for payment without the consumer's express verifiable authorization in violation of Section 310.3(a)(3) of the TSR.
87. The Galaxy Defendants' acts or practices alleged in Paragraph 86 constitute deceptive telemarketing acts or practices in violation of Section 310.3(b) of the TSR, 16 C.F.R. § 310.3(b).

**Count XII**  
**Lack of Express Informed Consent to be Billed**  
**(Galaxy Defendants)**

88. In numerous instances, in the course of telemarketing their products and services, the Galaxy Defendants have caused billing information to be submitted for payment without the express informed consent of the consumer.
89. The Galaxy Defendants' practice as alleged in Paragraph 88 is an abusive telemarketing act or practice that violates Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6).

**CONSUMER INJURY**

90. Consumers in the United States have suffered and will continue to suffer injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

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

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

**PRAYER FOR RELIEF**

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

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, 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 and the TSR by Defendants;

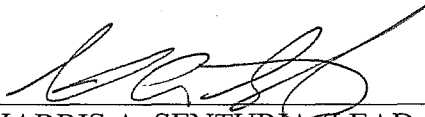
C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

Respectfully submitted,

WILLARD K. TOM  
General Counsel

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