



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Marketing Practices

Lois C. Greisman
Associate Director

January 29, 2020
Via Federal Express

Shoutpoint, Inc.
Attn: James Christiano, CEO
895 Dove Street, Suite 300
Newport Beach, CA 92660

Warning Regarding Assisting and Facilitating Illegal Robocalls

Dear Mr. Christiano,

This letter is to provide you with information about laws and regulations enforced by the Federal Trade Commission (“FTC”) that may bear upon your business activities as a Voice over Internet Protocol (“VoIP”) service provider.

The FTC, the nation’s consumer protection agency, enforces the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing practices. Section 310.3(b) of the TSR prohibits “assisting and facilitating” certain specified conduct.¹ Under that provision, “it is unlawful for any person or entity to provide substantial assistance or support to a seller or telemarketer when that person or entity knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Sections 310.3(a), (c), or (d), or Section 310.4 of the TSR,” which prohibit, among other conduct, the following:

- Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution (16 C.F.R. § 310.3(a)(4));
- Misrepresenting a seller or telemarketer’s affiliation with any government agency (16 C.F.R. § 310.3(a)(2)(vii));
- Transmitting false or deceptive caller ID numbers (16 C.F.R. § 310.4(a)(8));
- Initiating or causing the initiation of calls that deliver prerecorded messages, unless the person called provided the seller express written permission to call (16 C.F.R. § 310.4(b)(v)); and
- Initiating or causing the initiation of telemarketing calls to numbers listed on the National Do Not Call Registry, unless the person called provided express written

¹ A copy of the TSR is attached as Appendix A.

permission to receive calls from the seller or the seller had an existing business relationship with the person called (16 C.F.R. § 310.4(b)(iii)(B)).

The FTC can obtain civil penalties for TSR violations. Each illegal call is subject to a maximum civil penalty of \$43,280. *See* 16 C.F.R. § 1.89. In addition, a violation of the TSR is a violation of Section 5 of the FTC Act. *See* 15 U.S.C. §§ 6102(c), 57a(d)(3), 45(a). Accordingly, the FTC has authority to seek both preliminary and permanent injunctive relief to address violations of the TSR. *See* 15 U.S.C. § 53(b). The FTC may also seek the refund of money or payment of damages to address violations of the TSR. *See* 15 U.S.C. § 57b(b).

Combatting illegal telemarketing is a top priority for the FTC, with a special emphasis on halting illegal robocalls.² We want you to be aware that the FTC has, for example, brought assisting and facilitating claims against technology companies that knowingly provided software and servers used by illegal robocallers, even though these technology companies did not contract directly with the illegal robocallers. *See FTC v. James B. Christiano*, No. 8:18-cv-00936 (C.D. Cal. filed May 31, 2018).

We also want to bring to your attention that the FTC recently sued a VoIP service provider for allegedly violating the TSR, 16 C.F.R. Part 310. In that case, *FTC v. Educare*, the FTC alleged that defendant Globex Telecom, Inc. assisted and facilitated telemarketers it knew, or consciously avoided knowing, were violating the TSR's prohibitions on calls delivering prerecorded messages. *See FTC v. Educare Centre Services, Inc.*, No. 3:19-cv-00196-KC (W.D. Tex. Am. Compl. filed Dec. 3, 2019).³

The FTC has business educational materials that can assist you in complying with the TSR. *See* <https://www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule>.

In addition to FTC regulations and the FTC's December 2019 action against a provider of VoIP services, you should also be aware that the United States Department of Justice ("DOJ") recently brought two civil actions against VoIP companies and their owners. In those cases, DOJ alleged that the defendants were committing and conspiring to commit wire fraud by knowingly transmitting robocalls that impersonated federal government agencies. *See* <https://www.justice.gov/opa/pr/department-justice-files-actions-stop-telecom-carriers-who-facilitated-hundreds-millions>

We hope you will review this letter and the attached materials in detail. Please direct any inquiries regarding this letter to Ian Barlow at ibarlow@ftc.gov or (202) 326-3120.

² In fiscal year 2019, the FTC received more than 5.4 million complaints about unwanted calls, including more than 3.7 million robocall complaints. The FTC maintains an interactive Tableau Public web page that publishes details about do not call complaints on a quarterly basis. *See* <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/DoNotCallComplaints/Maps>.

³ A copy of the FTC's Amended Complaint is attached as Appendix B.

Sincerely,

/s/ Lois C. Greisman

Lois C. Greisman
Associate Director

Enclosures:

Appendix A (TSR)

Appendix B (*Educare* Amended Complaint)

Appendix A

(Telemarketing Sales Rule)

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**PART 310—TELEMARKETING SALES
RULE 16 CFR PART 310**

Sec.

310.1 Scope of regulations in this part.

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AUTHORITY: 15 U.S.C. 6101–6108.

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108, as amended.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

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(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash-to-cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

- (1) An electronic fund transfer as defined in section 903 of the EFTA;
- (2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or
- (3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form

that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

(h) *Charitable contribution* means any donation or gift of money or any other thing of value.

(i) *Commission* means the Federal Trade Commission.

(j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(k) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) *Credit card sales draft* means any record or evidence of a credit card transaction.

(m) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(p) *Donor* means any person solicited to make a charitable contribution.

(q) *Established business relationship* means a relationship between a seller and a consumer based on:

- (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the

consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(r) *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.

(s) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(u) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(v) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(w) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(x) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(y) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(z) *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.

(aa) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(bb) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a "remotely created check," as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(ff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026.

(dd) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(ee) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(ff) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(gg) *Telemarketing* means a plan, program, or campaign which is conducted

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to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

(hh) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An “external upsell” is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An “internal upsell” is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77557, Dec. 14, 2015]

§310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay⁶⁵⁹ for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;⁶⁶⁰

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller’s policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person’s chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

⁶⁵⁹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before the consumer enrolls in an offered program.

⁶⁶⁰ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule.

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(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in

the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

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(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,⁶⁶¹ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁶⁶² Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁶⁶³

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or

donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

(B) The number of debits, charges, or payments (if more than one);

(C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(D) The amount(s) of the debit(s), charge(s), or payment(s);

(E) The customer's or donor's name;

(F) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(G) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(H) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

⁶⁶¹ Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226.

⁶⁶² Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR part 205.

⁶⁶³ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to

a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77558, Dec. 14, 2015]

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not

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apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in § 310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be

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charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section;

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours;

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller

to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) Initiating any outbound telephone call to a person when:

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(1) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

⁶⁶⁴ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a

Continued

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(2) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in §310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person’s telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller’s entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller’s entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate §310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or

valid signature under applicable federal law or state contract law.

⁶⁶⁵ For purposes of this Rule, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-

day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011; 80 FR 77559, Dec. 14, 2015]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁶⁶⁷

(4) The name, any fictitious name used, the last known home address and

telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

⁶⁶⁷ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

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(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) for any requested charitable contribution; *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that §§310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77559, Dec. 14, 2015]

§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to

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the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do

Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$62 for each area code of data accessed, up to a maximum of \$17,021; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under §310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

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(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014; 80 FR 77560, Dec. 14, 2016; 81 FR 59845, Aug. 31, 2016; 82 FR 39534, Aug. 21, 2017]

§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Appendix B
(Educare Amended Complaint)

DEC 03 2019

CLERK
WESTERN DISTRICT OF TEXAS
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

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Federal Trade Commission, and
State of Ohio ex rel. Attorney General
Dave Yost,

Plaintiffs,

v.

Educare Centre Services, Inc., a New
Jersey corporation, also dba Credit Card
Services, Card Services, Credit Card
Financial Services, Care Net, Tripletel
Inc., Revit Educ Srvc, L.L. Vision, Care
Value Services, and Card Value Services,

Tripletel, Inc., a Delaware corporation,

Prolink Vision, S.R.L., a Dominican
Republic limited liability company,

9896988 Canada Inc., a Canadian
company,

Globex Telecom, Inc., a Nevada
corporation,

9506276 Canada, Inc., dba Globex
Telecom, Inc., a Canadian company,

Sam Madi, individually and as an owner,
officer, member, and/or manager of
Educare Centre Services, Inc.,

Mohammad Souheil a/k/a
Mohammed Souheil and Mike
Souheil, individually and as an owner,
officer, member, and/or manager of
Educare Centre Services, Inc., 9896988
Canada, Inc., Globex Telecom, Inc.,
9506276 Canada, Inc., and Prolink
Vision, S.R.L.,

Wissam Abedel Jalil a/k/a Sam Jalil,
individually and as an owner, officer,
member, and/or manager of Tripletel,
Inc., and Prolink Vision, S.R.L.,

No. 3:19-CV-196

FIRST AMENDED COMPLAINT
FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

1 **Charles Kharouf**, individually and as an
2 owner, officer, member, and/or manager
3 of Educare Centre Services, Inc., and
Prolink Vision, S.R.L.,

4 Defendants.

5
6
7 Plaintiffs, the Federal Trade Commission (“FTC”) and the State of Ohio, for their
8 First Amended Complaint (“FA Complaint”) allege:

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

17
18 2. The State of Ohio, by and through its Attorney General, Dave Yost, brings
19 this action pursuant to the Telemarketing Act, 15 U.S.C. § 6103, the Ohio Consumer Sales
20 Practices Act (“CSPA”), O.R.C. 1345.07, and the Ohio Telephone Solicitation Sales Act
21 (“TSSA”), O.R.C. 4719.01 *et seq.*, in order to obtain temporary, preliminary, and permanent
22 injunctive relief, consumer damages, and other equitable relief from Defendants.
23

24 **JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
26 1337(a), 1345, and 1367.
27
28

1 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C.
2 §§ 53(b), 57b.

3 15. Plaintiff State of Ohio is one of the fifty sovereign states of the United
4 States, and by and through its Attorney General, Dave Yost, it brings this action under
5 O.R.C. 1345.01 *et seq.* and O.R.C. 4719.01 *et seq.* Pursuant to the authority found in the
6 Telemarketing Act at 15 U.S.C. § 6103(a), Plaintiff State of Ohio is also authorized to initiate
7 federal district court proceedings to enjoin telemarketing activities that violate the TSR, and
8 in each such case, to obtain damages, restitution, and other compensation on behalf of Ohio
9 residents. This Court has supplemental jurisdiction over Plaintiff State of Ohio's state law
10 claims under 28 U.S.C. § 1367.

11 DEFENDANTS

12
13 16. The Educare Defendants sell the CCIRR service at issue; Prolink operates a
14 call center that telemarkets the CCIRR service to consumers on behalf of Educare; 988
15 maintained Educare's customer relationship management system ("CRM") and billing
16 reconciliation; and Globex Telecom, Inc. and 276 provided interconnected Voice over
17 Internet Protocol ("VoIP") communication services and facilities to Educare.

18
19 17. The four individual defendants are, or were during times relevant to the FA
20 Complaint, officers or managers of Educare, Prolink, 988, Globex Telecom, Inc., or 276,
21 and have directly participated in or controlled or had the authority to control the unlawful
22 conduct challenged by the FA Complaint.

23 *The Corporate Defendants*

24
25 18. **Educare Centre Services, Inc.**, also dba Credit Card Services, Card
26 Services, Credit Card Financial Services, Care Net, Tripletel, Inc., Revit Educ Srvc, L.L.
27 Vision, Care Value Services, and Card Value Services is a New Jersey corporation with its
28 registered address at 244 5th Avenue, Suite 11417, New York, NY 10001.

1 19. Educare has no website and does not appear to have a physical location in
2 the United States. Its president, director, and nominal owner is Sam Madi.

3 20. Souheil is the *de facto* principal behind Educare. He appears to operate the
4 company from Canada.

5 21. Educare sells the CCIRR service at issue in the FA Complaint.

6 22. Educare contracts with and supervises telephone call centers, including
7 Prolink, to market the CCIRR service.

8 23. Educare has been the subject of more than 100 Better Business Bureau
9 (“BBB”) consumer complaints and it and its dbas, including Credit Card Services and Care
10 Net, have received a “D+” or “F” rating from the BBB serving the Metropolitan New York
11 area. Educare routinely fails to respond to consumer complaints to the BBB.

12 24. At all times material to this FA Complaint, acting alone or in concert with
13 others, Educare has advertised, marketed, distributed, or sold the products and services at
14 issue in this FA Complaint to consumers throughout the United States. Educare transacts or
15 has transacted business in this district and throughout the United States.

16 25. **Tripletel, Inc.** is a Delaware corporation with its registered address at 910
17 Foulk Road, Suite 201, Wilmington, DE 19803. Wissam Abedel Jalil is the president and
18 owner of Tripletel.

19 26. Tripletel is a dba of Educare, which received \$2.3 million in deposits from
20 Madera.

21 27. **Prolink Vision, S.R.L.** is a Dominican Republic limited liability company
22 with its principal place of business at Av. 27 de Febrero Esq. Tiradentes, Plaza Merengue,
23 Segundo Piso, Local 214, Ens. Naco, Santo Domingo.

24 28. Prolink is a telemarketer operating a telephone call center in the Dominican
25 Republic. It has been marketing the CCIRR service sold by Educare since at least February
26
27
28

1 2016. In its marketing of the CCIRR service sold by Educare, Prolink telemarketers have:

2 (A) initiated numerous unsolicited telephone calls, including robocalls, to U.S. consumers; (B)
3 made unlawful telemarketing sales pitches regarding the CCIRR service sold by Educare; (C)
4 collected U.S. consumers' personal information, such as a Social Security number, email
5 address, credit card issuer and number, and bank account and routing numbers; and (D)
6 initiated three-way telephone calls with the U.S. consumers and the customer service
7 departments of the U.S. banks that issued the credit cards to the U.S. consumers.
8

9 29. Prolink received more than \$1.8 million in wire payments from the U.S.-
10 based Educare.

11 30. Prolink has an English language website at www.prolinkvision.com and a
12 Facebook webpage at www.facebook.com/Prolinkvision.

13 31. Prolink's officers Mohammed Souheil and Charles Kharouf, and previous
14 officer Wissam Abedel Jalil, appear to operate Prolink out of Canada.
15

16 32. Madi has identified himself as the General Manager of Prolink.

17 33. At all times material to this FA Complaint, acting alone or in concert with
18 others, Prolink has advertised, marketed, distributed, or sold the products and services at
19 issue in this FA Complaint to consumers throughout the United States. Prolink transacts or
20 has transacted business in this district and throughout the United States.
21

22 34. **9896988 Canada Inc.** is a Canadian corporation with a registered address of
23 7075 Place Robert-Joncas, Suite 225, St. Laurent, Québec H4M 2Z2, Canada. Souheil is the
24 sole owner and president of 988.

25 35. At Souheil's direction, 988 operated Educare's CRM, participated in the
26 debiting of consumers' accounts, and coordinated and reconciled the funds Educare had
27 withdrawn from consumers' checking accounts via unlawful RCPOs.
28

1 36. In performing operations related to 988, Souheil used the email address
2 mike@globextelecom.net.

3 37. 988 paid Madi almost \$100,000 CAD during 2017 and 2018, and Souheil
4 more than \$172,000 CAD from 2017 through 2019. Since at least February 2016, Educare
5 transferred at least \$1 million to 988. 988 also received more than \$100,000 from Globex
6 Telecom, Inc.

7 38. 988 transacts or has transacted business in this district and throughout the
8 United States.

9 39. **Globex Telecom, Inc.** (“Globex”) is a Nevada corporation. Its U.S. address
10 is 112 North Curry Street, Carson City, NV 89703. Globex also has an address in Canada at
11 7075 Robert-Joncas, Montreal, Quebec, H4M 2Z2 and 10 Four Seasons Place, 10th Floor,
12 Toronto, ON, M9B 6H7. It was previously organized under Delaware law and had a
13 Delaware address of 910 Foulk Road, Suite 201, Wilmington, Delaware 19803. Globex uses
14 the website address globextelecom.net.

15 40. Globex is an interconnected VoIP service provider. As an interconnected
16 VoIP service provider, Globex provides information services pursuant to 47 U.S.C. § 153 of
17 the Communications Act of 1934, as amended.

18 41. Souheil has been Globex’s chief executive officer, president and secretary, as
19 well as a director. Globex funds have been used for Souheil’s personal benefit.

20 42. On or about October 22, 2015, Globex entered into a Master Services
21 Agreement with Educare to provide Educare with “communication services and facilities.”
22 Souheil executed the Agreement on behalf of Globex. Between February 2016 and June
23 2018, Educare transferred more than \$1.6 million to Globex.

24 43. Globex transacts or has transacted business in this district and throughout
25 the United States.

1 51. In or around September 2017, Madi visited Prolink's office in the Dominican
2 Republic to, among other things, present reward certificates to several Prolink employees.
3 During his visit, Madi also took photos with Prolink employees; one such photo is posted to
4 Prolink's Facebook page, identifying Madi as Prolink's "General Manager."

5 52. On or about May 16, 2018, Madi sent an email to Mohammad Souheil from a
6 Prolink Vision email address in which Madi identified himself as the General Manager of
7 Prolink.
8

9 53. At all times material to this Complaint, acting alone or in concert with others,
10 Madi has formulated, directed, controlled, had the authority to control, or participated in the
11 acts and practices of Educare, including the acts or practices set forth in this Complaint.
12 Madi transacts or has transacted business in this district and throughout the United States.
13

14 54. **Mohammad Souheil**, a/k/a Mohammed Souheil and Mike Souheil
15 ("Souheil") is a Canadian citizen who resides in Montreal, Québec.

16 55. Souheil is the 51% owner and president of Prolink and the sole owner and
17 president of 988, which, together, have received wire transfers from Educare totaling more
18 than \$4 million.

19 56. Souheil was Educare's point of contact with Madera, Educare's El Paso,
20 Texas-based payment processor. Souheil regularly communicated with Madera via email,
21 text message, and telephone concerning Educare's processing settlements and consumers'
22 authorization for RCPOs. Souheil, using the email address mikesouheil@gmail.com, sent or
23 received more than 1200 emails to or from Madera concerning Madera's processing of
24 Educare payments.
25

26 57. Souheil knew that Educare's charges were being processed through RCPOs.

27 58. Soheil knew that Educare was telemarketing CCIRR services.
28

1 59. Souheil knew that Educare RCPOs had return rates of 10 to 20% and that
2 financial institutions had shut down Madera accounts used to process Educare payments.

3 60. According to Madera's owner and president, Bruce C. Woods, during the
4 four years that Madera processed payments for Educare, Souheil "always appeared to [him]
5 to be in charge of Educare."

6 61. In an email dated August 22, 2016, Souheil asked Woods if Educare can have
7 two logins under the Educare merchant account ("educare 2") because "I have a
8 [telemarketing] room i (sic) am opening and wanted to separate the login and the reports for
9 each how can we get that done?"

11 62. In an email dated October 13, 2016, Souheil informed Madera that Educare's
12 "[v]olume will double in the next 60-75 days. [W]e are aiming at [\$]1M a month in
13 processing on educare 2 this is what we are working hard to accomplish and it will be done i
14 (sic) am sure,... nothing will change this is why it takes time. I make sure the business model
15 stays the same and we grow in quality."

17 63. In an email dated May 22, 2018, Souheil requested that Madera set up a new
18 account for Educare under the descriptor "L.L. Vision" "so we move to it and start giving
19 this out to NEW clients."

20 64. On numerous occasions, Souheil received Educare funds via an account in
21 his name at a Canadian money transmitter, Altaif, Inc. From January 18, 2016 through May
22 25, 2019, Souheil received more than \$1.1 million from Educare via the Altaif, Inc. account.

24 65. Between 2008 and 2009, Souheil and defendant Wissam Abedel Jalil operated
25 a company known as FCS International ("FCS"), which exploited its membership in an
26 American Express affiliate program to market and sell CCIRR services to American Express
27 cardholders.
28

1 66. In 2009, American Express terminated its affiliate relationship with FCS after
2 receiving numerous complaints from cardholders about FCS's service. Consumers
3 complained that FCS failed to deliver on its promise to lower their credit card interest rates
4 in exchange for a fee, and submitted credit card applications on behalf of consumers
5 without authorization.

6 67. At all times material to this Complaint, acting alone or in concert with others,
7 Souheil has formulated, directed, controlled, had the authority to control, or participated in
8 the acts and practices of Educare, ProLink, 988, Globex Telecom, Inc., and 276, including
9 the acts or practices set forth in this Complaint. Souheil, in connection with the matters
10 alleged herein, transacts or has transacted business in this district and throughout the United
11 States.
12

13 68. **Wissam Abedel Jalil** a/k/a Sam Jalil ("Jalil") is a Canadian citizen who
14 resides in Montreal, Québec. Jalil is the president and owner of Tripletel.
15

16 69. Jalil executed an application for Educare's virtual office at 244 5th Avenue,
17 Suite 11417, New York, NY 10001. He also has signatory authority on a business checking
18 account in the name of Tripletel Inc., a dba of Educare, which received approximately \$2.3
19 million in deposits from Madera.
20

21 70. On numerous occasions co-defendant Madi used Sama Investments and
22 Trading, Inc., a Dearborn, Michigan money transmitter, to funnel Educare funds to Jalil via
23 an account in Souheil's name with a Canadian money transmitter, Altaif, Inc. Jalil received
24 more than \$283,000 from Educare via the Altaif, Inc., account in Jalil's name.

25 71. As described in Paragraphs 65-66 above, between 2008 and 2009, Jalil (along
26 with Souheil) operated a CCIRR scheme known as FCS, which marketed and sold CCIRR
27 services to American Express cardholders and generated numerous complaints about
28 deceptive acts and practices.

1 *de facto* principal of Educare. Both Madi and Jalil have executed applications for Educare's
2 virtual office at its New York address. Tripletel as a dba of Educare received \$2.3 million in
3 deposits from Madera.

4 80. Educare, Prolink, 988, and Tripletel have conducted business practices
5 described herein through interrelated companies, which have a common business purpose,
6 business functions, and employees; and that marketed and sold common services, shared
7 revenues, and comingled funds.
8

9 81. Because Educare, Prolink, 988, and Tripletel operated as a common
10 enterprise, each of the entities is jointly and severally liable for the acts and practices alleged
11 in this FA Complaint. At all times material to this Complaint, Souheil, Kharouf, Madi and
12 Jalil formulated, directed, controlled, had the authority to control, or participated in the acts
13 and practices of Educare, Prolink, 988, and Tripletel which constitute the Educare
14 Defendants common enterprise.
15

16 82. Defendants Globex Telecom, Inc. and 276 (collectively, "the Globex
17 Defendants") also have operated as a common enterprise while engaging in the unlawful acts
18 and practice alleged in this FA Complaint. They have conducted business practices
19 described herein through interrelated companies, which have a common business purpose,
20 business functions, and officers; have used the same name, shared revenues, and comingled
21 funds.
22

23 83. Because the Globex Defendants operated as a common enterprise, each is
24 jointly and severally liable for the acts and practices alleged against them in this FA
25 Complaint. At all times material to this Complaint, Souheil formulated, directed, controlled,
26 had the authority to control, or participated in the acts and practices of the Globex
27 Defendants.
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COMMERCE

84. At all times material to this FA 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.

REMOTELY CREATED PAYMENT ORDERS

AND REMOTELY CREATED CHECKS

85. An RCPO is a check or order of payment that the payee (typically a merchant or its agent) creates electronically, with software, using the payor’s (typically a consumer) bank account information.

86. Unlike with a conventional check, the payor does not sign the RCPO. Instead, the RCPO usually bears a statement indicating that the account holder (the account from which the money is to be drawn) authorized the check, such as “authorized by account holder” or “signature not required.”

87. RCPOs can be printed and manually deposited into the check clearing system like a conventional check. An electronic version of an RCPO that looks like a paper check, but never exists in paper form, can also be deposited into the check clearing system using remote deposit capture—a system that allows a depositor to scan checks remotely and transmit the check images to a bank for deposit.

88. RCPOs are generally subject to less oversight and monitoring than more prevalent methods of consumer payments, such as Automated Clearinghouse (“ACH”) and debit and credit card transactions.

89. Payments cleared through the ACH network are subject to oversight by NACHA - The Electronic Payments Association (“NACHA”), a self-regulatory trade association that enforces a system of rules, monitoring, and penalties for noncompliance.

1 NACHA monitors the levels at which ACH debits are returned (or rejected) by consumers
2 or consumers' banks, among other reasons, because high rates of returned transactions can
3 be indicative of unlawful practices by merchants.

4 90. The credit and debit card networks ("card networks"), such as MasterCard
5 and Visa, also have rules regarding onboarding and monitoring of merchants, and penalties
6 for noncompliance. These include heightened monitoring requirements for merchants
7 designated as high risk, such as telemarketers.
8

9 91. The card networks require network participants – including merchants,
10 payment processors and merchant banks – to monitor transactions for unusual activity
11 indicative of fraud or deception. One prominent indicator is a high chargeback rate.
12 Chargebacks occur when customers contact their credit card issuing bank to dispute a charge
13 appearing on their credit card account statement. Merchants with high chargeback rates may
14 be placed in a monitoring program and their sponsoring banks may be subject to fees and
15 fines.
16

17 92. Unlike ACH and debit and credit card transactions, RCPOs are not subject to
18 centralized and systemic monitoring.

19 93. Since June 13, 2016, the TSR has prohibited sellers and telemarketers from
20 using RCPOs in telemarketing sales. The FTC added this prohibition to the TSR because,
21 after an extensive notice and comment process, it found little record of legitimate
22 telemarketing business using RCPOs.
23

24 **DEFENDANTS' UNLAWFUL BUSINESS PRACTICES**

25 94. Since at least February 2016, the Educare Defendants have engaged in a
26 telemarketing scheme that markets a CCIRR service to consumers using false or
27 unsubstantiated claims. The Educare Defendants promise to reduce significantly the interest
28 rate on consumers' credit cards, and further promise a 100% money back guarantee if the

1 promised rate reduction does not materialize or the consumer is dissatisfied with the CCIRR
2 service. As described below, these promises are false or unsubstantiated.

3 95. The Educare Defendants use RCPOs to collect payments from consumers in
4 violation of the TSR, which expressly prohibits using RCPOs in connection with
5 telemarketing sales.

6 Defendants' Deceptive Telemarketing Campaign

7
8 96. Since at least February 2016, the Educare Defendants have engaged in a plan,
9 program, or campaign to advertise, market, promote, offer for sale, or sell a CCIRR service
10 through interstate telephone calls to consumers throughout the United States.

11 97. In numerous instances, the Educare Defendants have initiated, or directed
12 others, including telemarketers with Prolink, to initiate unsolicited telemarketing calls that
13 offer consumers an opportunity to lower their credit card interest rates.

14
15 98. In numerous instances, the Educare Defendants' telemarketing calls deliver
16 prerecorded voice messages. These messages offer consumers the opportunity to secure
17 credit card interest rates that are substantially lower from those consumers were paying, and
18 instruct consumers to press a button on the telephone keypad to hear more about the
19 service.

20
21 99. Consumers who press a button on their telephone keypad to hear more
22 about the service are connected to a live telemarketer who continues the deceptive sales
23 pitch, as described below. Many, if not all, of these telemarketers are associated with
24 Prolink's call center.

25 100. In numerous instances, the Educare Defendants' telemarketers fail to
26 disclose to consumers, truthfully, promptly, and in a clear and conspicuous manner, the
27 identity of the seller of the CCIRR service. Instead, the Educare Defendants' telemarketers
28 routinely identify themselves as representatives of "Credit Card Services," "Credit Card

1 Financial Services,” or similar Educare dbas that sound like the name of a bank or credit
2 card company.

3 101. In many instances, the Educare Defendants’ telemarketers know the last four
4 digits of at least one of the consumer’s credit cards. That fact often leads consumers to
5 assume that they are speaking with a representative or agent of their bank or credit card
6 company.

7
8 102. The Educare Defendants’ telemarketers guarantee to consumers that they
9 can substantially reduce consumers’ credit card interest rates.

10 103. In numerous instances, the Educare Defendants’ telemarketers have told
11 consumers holding credit cards with high double-digit interest rates that the CCIRR service
12 would reduce the interest rates on the consumers’ cards to 0%-10%, or transfer the balance
13 to credit cards with such substantially lower interest rates.

14
15 104. For example, one telemarketer placed a consumer on hold, and returned a
16 few minutes later stating that the Educare Defendants had permanently lowered the interest
17 rate on one of consumer’s credit cards to 3%, and would similarly lower the interest rates on
18 the consumer’s other credit cards if the consumer signed an online agreement.

19 105. Another of the Educare Defendants telemarketers told a consumer paying
20 about 29% on a combined credit balance of nearly \$8,000 that the Educare Defendants
21 worked with a bank that would give the consumer one new credit card with a 6.9% interest
22 rate and a credit limit exceeding the consumer’s combined balance.

23
24 106. In numerous instances, the Educare Defendants’ telemarketers tell
25 consumers that using the CCIRR service will not harm the consumers’ credit history. Some
26 of the Educare Defendants’ telemarketers have represented that the CCIRR service will
27 improve the consumers’ credit history because the consumer will be able to pay off his or
28 her credit card debt faster.

1 107. The Educare Defendants' telemarketers typically instruct consumers to
2 provide their personal information, such as a social security number, email address, credit
3 card issuer and number, and bank account and routing numbers.

4 108. Either before or after the consumers provide this information, the Educare
5 Defendants' telemarketers tell consumers that they have to pay an up-front fee for the
6 CCIRR service, which typically ranges from \$798 to \$1,192.

7 109. In numerous instances, the Educare Defendants' telemarketers have told
8 consumers that the significant savings the CCIRR service provides to the consumer would
9 offset the fee payment.

10 110. The Educare Defendants' telemarketers typically ask if the consumer agrees
11 to the fee and the CCIRR service, and tell consumers that their responses are being
12 recorded.
13

14 111. The Educare Defendants' telemarketers often tell consumers that they will
15 receive a written agreement describing the CCIRR service in the mail. In numerous, if not
16 all, instances, the consumers do not receive the promised agreement in the mail.

17 112. In numerous instances, the Educare Defendants' telemarketers tell
18 consumers that they will receive a text or email message asking them to confirm that they
19 want to purchase the CCIRR service. For example, one consumer received the following
20 text message: "Dear [consumer's name], Please reply YES to this msg to authorize the fee
21 of \$798 for services rendered by educare split into 5 payments. Thank you!"
22

23 113. As in the above instance, the Educare Defendants' telemarketers often do
24 not disclose the identity of Educare or its dbas up front. Instead, Educare or its dbas appear
25 for the first time in the confirmation-request email or text.
26

27 114. Consumers who respond to the confirmation-request text or email message
28 typically receive a subsequent text or email message confirming the fee authorization. For

1 example, one consumer received the following text message: “[Consumer’s name]: You have
2 approved 5 payment of \$159.60 for a total of \$798 to be debited from your Account XXX
3 Cst Srv: 866-456-1676”

4 115. In numerous instances, the Educare Defendants’ telemarketers and customer
5 service agents have refused to honor requests to cancel service from consumers who have
6 become concerned with or suspicious of the CCIRR service, including requests made on the
7 same day the service was purchased.
8

9 116. For example, in 2018, a telemarketer who identified himself as William Silva
10 and a “financial advisor” for “Card Services,” refused a consumer’s cancellation request after
11 the consumer agreed to pay for the CCIRR service but then attempted to back out of the
12 deal upon realizing during the telephone call that Mr. Silva did not represent his credit card
13 company.
14

15 117. Another Educare Defendants telemarketer told a consumer who requested to
16 cancel the CCIRR service on the same day of the purchase that it was too late because the
17 consumer had already agreed to the charges.

18 118. The Educare Defendants have also threatened consumers who sought to
19 cancel the CCIRR service with sending the consumers’ accounts to collections.
20

21 119. For example, a telemarketer who identified himself as Jacob Scott with Care
22 Value Services told one consumer who requested cancellation of the CCIRR service that the
23 consumer could not cancel, and that the Educare Defendants were still going to debit the
24 fees from consumer’s checking account, and if the consumer did not pay, the Educare
25 Defendants would tack on additional fees and sue him in court.

26 120. In numerous instances, the Educare Defendants have drawn, or caused to be
27 drawn, payments from accounts of consumers who requested to cancel the CCIRR service
28 and instructed the Educare Defendants not to draw funds from their accounts.

1 21. For example, in mid-2018, Educare debited nearly \$800 over a period of 5
2 months from the checking account of a consumer who told the Educare Defendants'
3 telemarketers and customer service agents not to charge his account and made repeated
4 requests to cancel the CCIRR service.

5 Unlawful RCPOs Drawn Against Consumers' Checking Accounts

6 22. To collect the fee for the CCIRR service, the Educare Defendants, with the
7 help of payment processor Madera, use personal information they solicit from consumers,
8 including bank account and routing number, to cause the creation of RCPOs drawn against
9 consumers' bank accounts.

11 23. Many such RCPOs are returned by the consumers' banks for reasons such as
12 "stop payment," "forgery," "closed account," and "unable to locate."

14 24. During the relevant period, several bank accounts opened by Madera under
15 various dbas of Educare had return rates of 20% or more.

16 25. Since January 2016, Madera has transferred to Educare at least \$11.5 million
17 in consumer funds collected through RCPOs. The Educare Defendants and Madera have
18 collected more than \$7 million of that amount from consumers after June 13, 2016, the date
19 on which the TSR started banning the use of RCPOs in connection with any telemarketing
20 sales.

22 Defendants Fail to Deliver the Promised Substantial Rate-Reduction

23 26. In some instances, after the consumers authorized the fee payment, the
24 Educare Defendants' telemarketers initiate three-way telephone calls with the consumers and
25 the customer service departments of the banks that issued the credit cards to the consumer.
26 During these three-way calls, the Educare Defendants' telemarketers request, or prompt the
27 consumers to request, that the bank reduce the interest rate on the consumers' credit cards.
28

1 127. In some instances, the Educare Defendants' telemarketers have asked
2 consumers to misrepresent or fabricate personal information to bank representatives.

3 128. In most instances, the three-way calls that the Educare Defendants'
4 telemarketers initiate with the consumers and the credit card issuing banks do not lead to the
5 promised substantial interest rate reduction, if any at all.

6 129. In numerous instances, the Educare Defendants use the information they
7 obtain from consumers to apply on behalf of consumers, or advise the consumer to apply,
8 for new credit cards with low introductory rates (commonly known as "teaser rates") and
9 transfer their existing credit card balances to those new cards.

10 130. For example, an Educare Defendants' telemarketer promised a consumer a
11 new credit card with a 0% APR for 1 year and a 6.99% fixed rate thereafter, but the
12 consumer actually received a new credit card with a 0% APR for 9 months and over 20%
13 APR thereafter.

14 131. In some instances, Educare Defendants' telemarketers apply for new credit
15 cards with teaser rates on behalf of consumers without consumers' knowledge or consent.

16 132. For example, the consumer whose unsuccessful efforts to cancel the CCIRR
17 service are discussed in Paragraph 116 of this Complaint received an email from Experian
18 Credit Reporting stating that two credit card applications were submitted using his personal
19 information. Soon thereafter, the consumer received a telephone call from a representative
20 of Chase Bank seeking to verify his application for a credit card, which the consumer had no
21 prior knowledge of and did not authorize.

22 133. The Educare Defendants' balance transfer tactic does not typically deliver the
23 promised substantial rate reduction. Consumers often cannot qualify for the new credit
24 cards, and in any event, the reduced rates are only temporary and commonly followed by
25 double-digit rates.
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1 134. After securing the consumer's payment and failing to provide the promised
2 substantial rate reduction, the Educare Defendants often stop returning the consumer's
3 phone calls and otherwise cease communicating with the consumer.

4 The Educare Defendants Routinely Refuse to Issue Refunds

5 135. In their sales pitches, the Educare Defendants' telemarketers routinely tout a
6 100% money-back guarantee if the Educare Defendants fail to deliver the promised
7 substantially lower credit card interest rate, or if the consumer is otherwise dissatisfied with
8 the CCIRR service.
9

10 136. In numerous instances, the Educare Defendants do not honor the refund
11 promises. Instead, the Educare Defendants routinely make it extremely difficult, if not
12 impossible, for consumers to reach a representative via telephone to process refund requests.
13

14 137. Many consumers have discovered that the contact number the Educare
15 Defendants' telemarketer provided is no longer in service.

16 138. Consumers who have been able to reach a representative of the Educare
17 Defendants by telephone have reported being strung along with no refund or even partial
18 refund issued.

19 139. For example, one consumer made over 20 telephone calls to Educare in an
20 effort to cancel the CCIRR service and get a refund, and spoke with various representatives
21 who were difficult to understand, evasive, condescending, transferred her to a "manager"
22 that never answered the phone, or misrepresented that Educare had delivered the promised
23 interest rate reduction even though it had not done so.
24

25 140. In addition, Educare has routinely failed to respond to consumer complaints
26 and refund requests sent to it by the Better Business Bureau and state attorneys general.
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The Educare Defendants' Abusive Telemarketing Practices

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141. In numerous instances, the Educare Defendants, acting directly or through one or more intermediaries, have initiated telemarketing calls to consumers throughout the United States that delivered a prerecorded message promoting the CCIRR service, without first having obtained the consumer's signed express written agreement to receive such calls by or on behalf of the Educare Defendants.

142. In marketing the CCIRR service, in numerous instances, the Educare Defendants, acting directly or through one or more intermediaries, have called telephone numbers listed in various area codes throughout the United States, including telephone numbers listed on the National Do Not Call Registry maintained by the FTC, without the Educare Defendants' first paying the annual fee for access to the telephone numbers within such area codes.

143. In numerous instances, the Educare Defendants have received fees they caused to be drawn from consumers' bank accounts during or immediately after the telemarketing call offering the CCIRR service, but before the Educare Defendants had undertaken any efforts to reduce the consumers' credit card interest rates. This is illegal under the TSR.

144. In numerous instances, the Educare Defendants, acting directly or through one or more intermediaries, have caused the creation of RCPOs as payment for the CCIRR service offered or sold through telemarketing.

The Globex Defendants Assisted and Facilitated Educare's Telemarketing Scheme

145. The Globex Defendants provided substantial assistance to the Educare Defendants by providing them with the means to call consumers throughout the United States via interconnected VoIP communication services and facilities.

1 146. Since circa January 2016, the Globex Defendants and their owner and *de facto*
2 principal, Souheil, knew or consciously avoided knowing that Educare was violating the TSR
3 in its telemarketing of CCIRR services. Souheil and the Globex Defendants knew or
4 consciously avoiding knowing that, among other things, Educare:

- 5 A. Misrepresented that consumers who purchase the CCIRR service (1)
6 would have their credit card interest rates reduced substantially; or
7 (2) would be entitled to a full refund if the Educare Defendants
8 could not obtain a lower interest rate or if the consumer was not
9 completely satisfied with the CCIRR service;
10
11 B. Created or caused to be created, directly or indirectly, a remotely
12 created payment order as payment for goods or services offered or
13 sold through telemarketing, during the time periods set forth in the
14 FA Complaint;
15
16 C. Charged or received a fee in advance of providing debt relief service;
17
18 D. Initiated outbound telephone calls that delivered unlawful;
19 prerecorded messages; or
20
21 E. Failed to disclose the identity of the seller of the CCIRR service
22 truthfully, promptly, and in a clear and conspicuous manner to the
23 person receiving the call.

24 147. Between January 2016 and November 2018, Educare caused more than \$9.5
25 million in unreimbursed consumer harm to consumers in the United States. The Globex
26 Defendants are jointly and severally liable with the Educare Defendants for that harm, which
27 was caused by their provision of communication services and facilities to the Educare.
28

Ohio's Telephone Solicitor's Registration Requirement

1
2 148. Ohio's Telephone Solicitation Sales Act, O.R.C. 4719.01 *et seq.*, generally
3 requires telephone solicitors that make telephone solicitations to individuals in Ohio to
4 register with and file a copy of a surety bond with the Ohio Attorney General.

5 149. Defendants Educare and ProLink have been solicitors that make telephone
6 solicitations to individuals in Ohio. Nevertheless, they have neither registered as telephone
7 solicitors with, nor provided a copy of a surety bond to, the Ohio Attorney General.
8

9 150. Based on the facts and violations of law alleged in this Complaint, Plaintiffs
10 have reason to believe that the Educare Defendants and the Globex Defendants are violating
11 or are about to violate laws enforced by the Commission and the Ohio Attorney General.

12 VIOLATIONS OF THE FTC ACT

13 151. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive
14 acts or practices in or affecting commerce."
15

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

18 COUNT ONE (EDUCARE DEFENDANTS)

19 **False or Unsubstantiated Credit Card Interest Rate Reduction and Refund Claims**

20 21 153. In numerous instances, in connection with the advertising, marketing,
22 promotion, offering for sale, or sale of a debt relief service, the Educare Defendants have
23 represented, directly or indirectly, expressly or by implication, that:

- 24 A. Consumers who purchase the CCIRR service would have their credit
25 card interest rates reduced substantially; and/or
26 B. Consumers who purchase the CCIRR service would be entitled to a
27 full refund if Defendants could not obtain a lower interest rate or if
28 the consumer was not completely satisfied with the CCIRR service.

1 telephones and which involves more than one interstate telephone call. 16 C.F.R. §
2 310.2(gg).

3 159. The Educare Defendants are sellers or telemarketers of “debt relief services”
4 as defined by the TSR, 16 C.F.R. § 310.2(o). Under the TSR, a “debt relief service” is any
5 program or service represented, directly or by implication, to renegotiate, settle, or in any
6 way alter the terms of payment or other terms of the debt between a person and one or
7 more unsecured creditors, including, but not limited to, a reduction in the balance, interest
8 rate, or fees owed by a person to an unsecured creditor or debt collector. 16 C.F.R. §
9 310.2(o).

10 160. The TSR prohibits sellers and telemarketers from misrepresenting, directly or
11 by implication, any material aspect of any debt-relief service, including but not limited to,
12 the amount of money or the percentage of the debt amount that a customer may save by
13 using the service. 16 C.F.R. § 310.3(a)(2)(x).

14 161. The TSR prohibits sellers and telemarketers from requesting or receiving
15 payment of any fee or consideration for any debt relief service until and unless:

- 16 A. The seller or telemarketer has renegotiated, settled, reduced, or otherwise
17 altered the terms of at least one debt pursuant to a settlement agreement,
18 debt management plan, or other such valid contractual agreement
19 executed by the customer;
- 20 B. The customer has made at least one payment pursuant to that settlement
21 agreement, debt management plan, or other valid contractual agreement
22 between the customer and the creditor or debt collector; and
- 23 C. To the extent that debts enrolled in a service are renegotiated, settled,
24 reduced, or otherwise altered individually, the fee or consideration either:
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- i. Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or
- ii. Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt. 16 C.F.R. § 310.4(a)(5)(i).

162. The TSR prohibits sellers and telemarketers from creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing. 16 C.F.R. § 310.4(a)(9). A remotely created payment order includes a remotely created check. 16 C.F.R. § 310.2(cc).

163. The 2003 amendments to the TSR established the National Do Not Call Registry, maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

164. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, to pay any required fee(s), and to download the numbers not to call.

165. The TSR prohibits sellers and telemarketers from calling any telephone number within a given area code unless the seller on whose behalf the call is made has paid

1 the annual fee for access to the telephone numbers within that area code included in the
2 Registry. 16 C.F.R. § 310.8.

3 166. The TSR prohibits sellers and telemarketers from initiating an outbound
4 telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

5 167. The TSR prohibits initiating a telephone call that delivers a prerecorded
6 message to induce the purchase of any good or service unless the seller has obtained from
7 the recipient of the call an express agreement, in writing, that evidences the willingness of
8 the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of
9 a specific seller. 16 C.F.R. § 310.4(b)(1)(v)(A).

11 168. The TSR requires telemarketers in an outbound telephone call or internal or
12 external upsell to induce the purchase of goods or services to disclose the identity of the
13 seller truthfully, promptly, and in a clear and conspicuous manner to the person receiving the
14 call. 16 C.F.R. § 310.4(d)(1).

15 169. It is a deceptive telemarketing act or practice and a violation of this Rule for
16 a person to provide substantial assistance or support to any seller or telemarketer when that
17 person knows or consciously avoids knowing that the seller or telemarketer is engaged in any
18 act or practice that violates Sections 310.3(a), (c) or (d) or Section 310.4 of this Rule. 16
19 C.F.R. § 310.3(b).

21 170. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
22 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an
23 unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of
24 the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

(By the FTC and the State of Ohio)

COUNT TWO (EDUCARE DEFENDANTS)

Misrepresentations of Material Aspects of a Debt Relief Service

171. In numerous instances since February 2016, in connection with the telemarketing of a debt relief service, the Educare Defendants have misrepresented, directly or by implication, material aspects of the service, including, but not limited to, that:

- A. Consumers who purchase the CCIRR service would have their credit card interest rates reduced substantially; and/or
- B. Consumers who purchase the CCIRR service would be entitled to a full refund if the Educare Defendants could not obtain a lower interest rate or if the consumer was not completely satisfied with the CCIRR service.

172. The Educare Defendants' acts and practices, as set forth in Paragraph 171 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(x).

COUNT THREE (EDUCARE DEFENDANTS)

Charging or Receiving a Fee in Advance of Providing

Debt Relief Service

173. In numerous instances since February 2016 in connection with the telemarketing of a debt relief service, the Educare Defendants have requested or received payment of a fee or consideration for a debt relief service before: (a) they have renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement.

1 executed by the consumer; and (b) the consumer has made at least one payment pursuant to
2 that agreement.

3 174. The Educare Defendants' acts or practices, as set forth in Paragraph 173
4 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. §
5 310.4(a)(5)(i).

6 **COUNT FOUR (EDUCARE DEFENDANTS)**

7 **Use of Remotely Created Payment Orders**

8 **in Connection with Telemarketing**

9
10 175. In numerous instances since June 13, 2016, the Educare Defendants have
11 created or caused to be created, directly or indirectly, a remotely created payment order as
12 payment for goods or services offered or sold through telemarketing.

13 176. The Educare Defendants acts or practices, as set forth in Paragraph 175
14 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. §
15 310.4(a)(9).

16 **COUNT FIVE (EDUCARE DEFENDANTS)**

17 **Initiating Unlawful Prerecorded Messages**

18
19 177. In numerous instances since February 2016, in connection with
20 telemarketing, the Educare Defendants have engaged in, or caused a telemarketer to engage
21 in, initiating outbound telephone calls that deliver prerecorded messages in violation of the
22 TSR, 16 C.F.R. § 310.4(b)(1)(v)(A).

23 **COUNT SIX (EDUCARE DEFENDANTS)**

24 **Failing to Pay National Registry Fees**

25
26 178. In numerous instances since February 2016, in connection with
27 telemarketing, the Educare Defendants have initiated, or caused others to initiate, an
28 outbound telephone call to a telephone number within a given area code when the Educare

1 Defendants had not, either directly or through another person, paid the required annual fee
2 for access to the telephone numbers within that area code that are included in the National
3 Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

4 **COUNT SEVEN (EDUCARE DEFENDANTS)**

5 **Failure to Make Oral Disclosures Required by the TSR**

6 179. In numerous instances since February 2016, in connection with
7 telemarketing, the Educare Defendants have initiated, or caused others to initiate, an
8 outbound telephone call to induce the purchase of a CCIRR service that failed to disclose
9 the identity of the seller of the CCIRR service truthfully, promptly, and in a clear and
10 conspicuous manner to the person receiving the call, in violation of the TSR, 16 C.F.R.
11 § 310.4(d)(1).
12

13 **COUNT EIGHT (GLOBEX DEFENDANTS)**

14 **Assisting and Facilitating**

15 180. As described in paragraphs 16-17, 42, 67, 82-83, 145-47, above, the Globex
16 Defendants have, in numerous instances, provided substantial assistance and support,
17 though the provision of communication services and facilities, to one or more sellers or
18 telemarketers, whom the Globex Defendants knew, or consciously avoided knowing, were
19 violating §§ 310.3(a)(2)(x), 310.4(a)(5)(i), 310.4(a)(9), 310.4(b)(1)(v)(A), and 310.4(d)(1) of the
20 TSR by:
21

- 22
- 23 A. Misrepresented that consumers who purchase the CCIRR service
24 (1) would have their credit card interest rates reduced substantially; or
25 (2) would be entitled to a full refund if the Educare Defendants could
26 not obtain a lower interest rate or if the consumer was not completely
27 satisfied with the CCIRR service;
 - 28 B. Charging or receiving a fee in advance of providing debt relief service;
 - C. Using RCPOs as payment for goods or services offered or sold through
telemarketing;

- 1 D. Initiating outbound telephone calls that deliver unlawful prerecorded
- 2 messages; or
- 3 E. Failing to disclose the identity of the seller of the CCIRR service
- 4 truthfully, promptly, and in a clear and conspicuous manner to the person
- 5 receiving the call.

6 181. The Globex Defendants' acts or practices, as described in Paragraph 181
7 above, violate the TSR, 16 C.F.R.; § 310.3(b).

8 **VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT**

9 **(By the State of Ohio)**

10 182. Ohio's CSPA, O.R.C. 1345.01 *et seq.*, generally prohibits "suppliers" from
11 engaging in unfair or deceptive acts or practices in connection with "consumer transactions."

12 183. Defendants are "suppliers" as defined in O.R.C. 1345.01(C) because they, at
13 all times relevant hereto, were engaged in the business of effecting or soliciting consumer
14 transactions, whether or not they dealt directly with consumers.

15 **COUNT NINE (EDUCARE DEFENDANTS)**

16 **Failing to Deliver Services or Provide Refunds**

17 184. As described in paragraphs 16-149 above, the Educare Defendants
18 committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule,
19 O.A.C. 109:4-3-09(A) and the CSPA, O.R.C. 1345.02(A), by accepting money from
20 consumers for goods or services, and specifically offering services to reduce the consumers'
21 credit card rates, and then permitting eight weeks to elapse without making shipment or
22 delivery of the goods or services ordered, making a full refund, advising the consumer of the
23 duration of an extended delay and offering to send a refund within two weeks if so
24 requested, or furnishing similar goods or services of equal or greater value as a good faith
25 substitute.
26
27
28

COUNT TEN (EDUCARE DEFENDANTS)

Misrepresenting Characteristics of the Transaction

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2
3 185. As described in paragraphs 16-149 above, the Educare Defendants
4 committed unfair or deceptive acts or practices in violation of the CSPA, O.R.C. 1345.02(A),
5 by misrepresenting that the subject of a consumer transaction has sponsorship, approval,
6 performance characteristics, uses, or benefits that it did not have, and specifically by (1)
7 misrepresenting that their services will substantially reduce consumers credit card interest
8 rates, (2) misrepresenting that their services have a 100% money-back guarantee, and (3)
9 misrepresenting that they will send consumers a written agreement packet in the mail after
10 consumers agree to the service over the telephone.
11

COUNT ELEVEN (EDUCARE DEFENDANTS)

Using Remotely Created Payment Orders in Connection with Telemarketing

12
13
14
15 186. As described in paragraphs 16-149 above, the Educare Defendants
16 committed unfair or deceptive acts or practices in violation of the CSPA, O.R.C. 1345.02(A),
17 by creating or causing to be created, directly or indirectly, a remotely created payment order
18 as payment for goods or services offered or sold through telemarketing.
19

VIOLATIONS OF THE OHIO TELEPHONE SOLICITATION SALES ACT

(by the State of Ohio)

20
21
22 187. Defendants initiated “telephone solicitations” to “purchasers,” as they were
23 at all times relevant herein, engaged in initiating “communications” on behalf of “telephone
24 solicitors” or “salespersons” to induce persons to purchases “goods or services,” as those
25 terms are defined in the TSSA, O.R.C. 4719.01(A).
26

27 188. Defendants are “telephone solicitors” as that term is defined in the TSSA,
28 O.R.C. 4719.01(A)(8), as they were at all times relevant herein, engaged in initiating

1 telephone solicitations directly or through one or more salespersons from a location in Ohio
2 or from a location outside of Ohio to persons in Ohio.

3 **COUNT TWELVE (EDUCARE DEFENDANTS)**

4 **Failure to Comply with Registration and Surety Bond Requirements**

5 189. As described in paragraphs 16-149 above, the Educare Defendants
6 committed unfair or deceptive acts and practices in violation of the TSSA, O.R.C.
7 4719.02(A) and 4719.04(A), and the CSPA, O.R.C. 1345.02(A), by acting as a telephone
8 solicitor without first having obtained a certificate of registration from the Ohio Attorney
9 General, and filing a copy of a surety bond in the amount of at least fifty thousand dollars
10 with the Ohio Attorney General.

11 **COUNT THIRTEEN (EDUCARE DEFENDANTS)**

12 **Failure to Disclose the True Name of the Solicitor and Business**

13 190. As described in paragraphs 16-149 above, the Educare Defendants
14 committed unfair or deceptive acts and practices in violation of the TSSA, O.R.C.
15 4719.06(A) and the CSPA, O.R.C. 1345.02(A), by failing to disclose the solicitor's true name
16 and the name of the company on whose behalf solicitations were made, within the first sixty
17 seconds of the telephone call.
18

19 **COUNT FOURTEEN (EDUCARE DEFENDANTS)**

20 **Failure to Obtain Signed Written Confirmation of Sales**

21 191. As described in paragraphs 16-149 above, the Educare Defendants
22 committed unfair or deceptive acts and practices in violation of the TSSA, O.R.C. 4719.07
23 and the CSPA, O.R.C. 1345.02(A), by taking payment from a consumer as the result of a
24 telephone solicitation and not providing to, and receiving back from the consumer, a written
25 confirmation that meets the requirements of O.R.C. 4719.07.
26
27
28

CONSUMER INJURY

1
2 192. Consumers are suffering, have suffered, and will continue to suffer
3 substantial injury as a result of Defendants' violations of the FTC Act, the TSR, the CSPA,
4 and the TSSA.

5 193. The Educare Defendants' fraudulent telemarketing scheme has caused more
6 than \$11.5 million to be withdrawn from consumers' checking accounts. In addition,
7 Defendants have been unjustly enriched as a result of their unlawful acts or practices.
8 Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers,
9 reap unjust enrichment, and harm the public interest.

10
11 **THIS COURT'S POWER TO GRANT RELIEF**

12 194. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
13 grant injunctive and such other relief as the Court may deem appropriate to halt and redress
14 violations of any provision of law enforced by the FTC.

15
16 195. The Court, in the exercise of its equitable jurisdiction, may award ancillary
17 relief, including rescission or reformation of contracts, restitution, the refund of monies
18 paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
19 provision of law enforced by the FTC.

20
21 196. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to
22 allow Plaintiff State of Ohio, Office of Attorney General, to enforce its state law claims
23 against Defendants in this Court for violations of the CSPA and the TSSA, including
24 injunctive relief, rescission or reformation of contracts, the refund of monies paid, and the
25 disgorgement of ill-gotten monies.

26
27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs FTC and the State of Ohio, pursuant to Sections 13(b)
and 19 of the FTC Act, 15 U.S.C. §§ 53(b), 57b; the TSR; Section 1345.07 of the Ohio

1 CSPA; Section 4719.22 of the Ohio TSSA; and the Court's own equitable powers, request
2 that the Court:

3 A. Award Plaintiffs such preliminary injunctive and ancillary relief as may be
4 necessary to avert the likelihood of consumer injury during the pendency of this action and
5 to preserve the possibility of effective final relief, including temporary and preliminary
6 injunctions, and an order providing for the turnover of business records, an asset freeze,
7 immediate access, the appointment of a receiver, and disruption of telephone service;

8 B. Enter a permanent injunction to prevent future violations of the FTC Act,
9 the TSR, the Ohio CSPA, and the Ohio TSSA by Defendants;


10 C. Award Plaintiffs such relief as the Court finds necessary to redress injury to
11 consumers resulting from Defendants' violations of the FTC Act, the TSR, the Ohio CSPA,
12 and the Ohio TSSA, including rescission or reformation of contracts, restitution, the refund
13 of monies paid, and the disgorgement of ill-gotten monies; and

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

16 Respectfully submitted,

17 ALDEN F. ABBOTT
18 General Counsel

19 Dated:

20 /s/ 
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